

# **REQUEST FOR PROPOSALS NO. 10-001**

INFORMATIONAL DOCUMENT  
FOR  
PROPOSALS TO FURNISH  
BENEFIT PLAN CONSULTING SERVICES

Issued by  
Hawaii Employer-Union Health Benefits Trust Fund  
City Financial Tower  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

State of Hawaii  
August 2010

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## **NOTICE TO OFFERORS**

The Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") seeks qualified offerors to furnish Benefit Plan Consulting Services.

Sealed proposals for this project, No. 10-001, will be received at:

Hawaii Employer-Union Health Benefits Trust Fund  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

Proposals will be accepted up to 4:00 p.m., Hawaii Standard Time ("HST"), September 22, 2010. Proposals received after this time will not be accepted. The Request for Proposals ("RFP") may be examined at or obtained from the office listed above. The RFP is also available on-line at [www.spo.hawaii.gov](http://www.spo.hawaii.gov) or [www.eutf.hawaii.gov](http://www.eutf.hawaii.gov).

For further information, call Sandra Yahiro, Procurement Officer, at (808) 587-5434.

LEGAL AD DATE: August 2, 2010

## **SECTION ONE**

### **ADMINISTRATIVE OVERVIEW**

#### **1.01 PURPOSE**

This Request for Proposals (“RFP”) is issued by the Hawaii Employer-Union Health Benefits Trust Fund (“EUTF”). The purpose of this RFP is to select a qualified and licensed contractor (aka “consultant”) to provide benefit plan consulting services.

The EUTF was established by Act 88, Session Laws of Hawaii, 2001, replacing the Hawaii Public Employees Health Fund. Act 88 is partially codified as Chapter 87A, Hawaii Revised Statutes (“HRS”). Under Chapter 87A, the EUTF is authorized to design, provide, and administer health and other benefit plans for State and county employees, retirees, and their dependents. The EUTF is attached to the State Department of Budget and Finance for administrative purposes. Chapter 87A is attached in Appendix A of this RFP.

Since July 1, 2003, the EUTF has offered insured health and other benefit plans to all State and county employees, retirees, and their dependents. The benefit plans include medical, prescription drug, chiropractic, vision, dental, and life insurance. The EUTF’s plan year for active employees is July 1 through June 30 (fiscal year). The EUTF’s plan year for retirees is the calendar year. The EUTF currently offers self-funded medical and prescription drug plans administered by Hawaii Medical Service Association (HMSA), Health Management Associates (HMA), and informedRx to its active employees, retirees and their dependents. All other plans which include HMO medical (administered by Kaiser), chiropractic, dental, vision, and life insurance are fully insured. For purposes of this RFP “self insured” and “self funded” shall have the same meaning.

The EUTF is administered by a board of ten trustees (the “Board”) who are appointed by the Governor. Five trustees represent the employee-beneficiaries (one of whom represents retired employee-beneficiaries). These five trustees are selected by the Governor from a list of candidates provided by the exclusive employee representative organizations. The remaining five trustees represent the public employers. The Board’s responsibilities include determining the nature and scope of benefit plans, negotiating and entering into contracts with insurance carriers, establishing eligibility and management policies, and overseeing all EUTF activities. The Board has adopted rules to implement the administration and purposes of the EUTF (see Appendix B of this RFP).

The EUTF’s day-to-day operations are administered by an administrator appointed by the Board (“Administrator”). The Administrator is assisted in managing the EUTF by an assistant administrator, a financial management officer, and an information systems analyst. EUTF has a total of 35 employees (including management staff and the Administrator). Act 106, SLH2010 will add another 10 employees. The EUTF is organized under three branches: Financial Services, Information Systems, and Member Services. A health benefits program manager oversees the Member Services Branch and is supported by employees assigned to customer service duties to answer

phones and e-mails from members and seven other employees to process all active employee enrollment submissions and to handle all processing for retirees. The financial management officer is supported by accountants and account clerks who reconcile employee accounts, collect employer/employee contributions for health benefits and process all payments. The EUTF information system analyst is supported by two IT specialists and provides internal IT support services, HIPAA security responsibilities, and coordinates additional support services provided by Department of Accounting and General Services / Information and Communication Services Division.

The current Annual Report for the EUTF is located in Appendix C of this RFP and prior EUTF Annual Reports are on-line at [hawaii.gov/budget/legreports/](http://hawaii.gov/budget/legreports/).

## **1.02 CONTRACT PERIOD**

The term of any contract resulting from this RFP (the "contract") shall commence on or before July 1, 2011 and will continue through June 30, 2013. At its sole discretion, the EUTF shall have an option to extend the contract for two years. The option shall be exercised by the Board giving written notice to the consultant no later than sixty (60) days prior to the expiration of the initial term of the contract.

## **1.03 SIGNIFICANT DATES**

The Significant Dates set out below present the EUTF's best estimate of the anticipated schedule of events. The Board reserves the right to change any of these date(s) as deemed necessary and in the best interest of the EUTF.

RFP issued	August 2, 2010
Deadline for letters of intent	August 13, 2010 4:00 p.m. (HST)
Deadline for submission of written questions	August 13, 2010 4:00 p.m. (HST)
EUTF's response to written questions	August 27, 2010
Deadline for receipt of proposals	September 22, 2010 4:00 p.m. (HST)
Evaluation Committee evaluates proposals Determination of priority- listed offerors (if necessary)	Sept. 27 - Oct. 1, 2010
Discussions with priority- listed offerors (if necessary)	Oct. 11 – Oct. 13, 2010
Best and final offers due (if any)	October 22, 2010 4:00 p.m. (HST)
Evaluation Committee meets, discusses proposals, completes ratings of finalists, and makes recommendation to Board	Oct. 26 - Oct. 27, 2010
Contractor selection and award	October 29, 2010
Contract signed by Consultant	December 3, 2010

Contract start date

On or before July 1, 2011

#### **1.04 AUTHORITY**

This RFP is issued under the provisions of Chapter 103D, Hawaii Revised Statutes ("HRS"), the applicable provisions of the Hawaii Administrative Rules ("HAR"), and Chapter 87A, HRS. All prospective offerors are charged with presumptive knowledge of all requirements of the cited authorities. Chapter 103D, HRS, and the HAR regarding Chapter 103D, HRS, are available on the State of Hawaii website at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Chapter 87A, HRS, and the administrative rules of the EUTF are available on the EUTF website at [www.eutf.hawaii.gov](http://www.eutf.hawaii.gov).

#### **1.05 ORGANIZATION OF RFP**

This RFP is organized into six sections:

- |           |                                 |  |
|-----------|---------------------------------|--|
| Section 1 | Administrative Overview         | - Provides offerors with an overview of the procurement process and terms and conditions of this solicitation.   |
| Section 2 | Proposal                        | - Describes the required format and content for the offerors' proposals.   |
| Section 3 | Proposal Evaluation             | - Describes the Evaluation Committee that will evaluate the proposals and the criteria that will be used by the Evaluation Committee.  |
| Section 4 | Scope of Work                   | - Provides offerors with specifications and a general description of the tasks to be performed, delineates offeror responsibilities, and defines deliverables (as applicable). |
| Section 5 | Special Conditions              | - Sets out special conditions that will be part of any contract resulting from this solicitation.  |
| Section 6 | Contract and General Conditions | - Provides offerors with a copy of the standard contract form and general conditions that will be used for any contract resulting from this solicitation.                      |
|           | Appendices                      | - Provides offerors with information and forms pertaining to their preparation of proposals.   |

#### **1.06 ISSUING OFFICE AND CONTACT PERSON**

This RFP is issued by the EUTF. The issuing office ("Issuing Office") is:

Hawaii Employer-Union Health Benefits Trust Fund  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

The Procurement Officer and Contract Administrator for this procurement is:

Sandra Yahiro  
Hawaii Employer-Union Health Benefits Trust Fund  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813  
Telephone: (808) 587-5434  
Facsimile: (808) 586-2320  
E-mail: eutfadmin@hawaii.gov

The Procurement Officer is the sole point of contact for this procurement.

#### **1.07 LETTER OF INTENT**

Persons interested in submitting a proposal in response to this RFP should submit a non-binding letter of intent in the form attached as Appendix D to the Issuing Office by the time and date specified in Section 1.03, Significant Dates (page 5). Failure to submit a letter of intent does not preclude an offeror from submitting a proposal in response to this RFP. However, answers to written questions, modifications, amendments, addenda, and clarifications to the RFP, and other official communications relating to the RFP will be sent only to persons and entities that have submitted a letter of intent.

#### **1.08 WRITTEN QUESTIONS AND RESPONSES**

If a prospective offeror wants a formal answer to questions concerning this RFP, the prospective offeror must submit such questions to the Procurement Officer by the time and date specified in Section 1.03, Significant Dates (page 5).

To facilitate a meaningful response, written questions must reference the page, paragraph, and line or sentence of the RFP to which the question relates. Questions may be submitted by facsimile machine provided they are received by the specified deadline. Such documents must contain pertinent information to identify the prospective offeror, its telephone and FAX numbers, e-mail address, this RFP's number, and be addressed to the Procurement Officer.

All official responses will be in writing and will be e-mailed to all prospective offerors who submitted a timely letter of intent. The EUTF is not responsible for delays or non-receipt of such responses or any communications by the prospective offerors.

The response to the prospective offerors' written questions shall be compiled, shall omit reference to the source(s) of the questions, shall be issued as an addendum to the RFP, and shall become a part of the RFP.

#### **1.09 SUBMISSION OF PROPOSALS**

Each offeror may submit only one (1) proposal. Alternate proposals will not be accepted.

Each offeror must submit nineteen (15) copies and one single-sided unbound original of the offeror's proposal (for a total of sixteen [16]). Proposals must be received and time-stamped by the Issuing Office no later than the time and date specified in Section 1.03, Significant Dates (page 5). Any proposal received after that time and date will be rejected. The original proposal must be single sided, unbound, and clearly marked, "Original." Each copy must be marked, "Copy \_\_\_\_ of \_\_\_\_." Copies may be bound and double-sided.

**FAXED AND E-MAILED PROPOSALS WILL NOT BE ACCEPTED OR CONSIDERED FOR AWARD.**

Proposals shall be mailed or hand delivered to the Issuing Office (see page 6 for address information).

The outside cover of the package containing the proposals shall be marked:

Proposal Submitted in Response to  
RFP No. 10-001  
Hawaii Employer-Union Health Benefits Trust Fund

#### **1.10 DISCUSSION AND PRESENTATIONS**

Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award. Such offerors may be invited to make presentations to the Evaluation Committee to clarify their proposals, to promote understanding of the EUTF's requirements and the offeror's proposal, and to facilitate arriving at a contract that will provide the best value to the EUTF. Whether such discussions and presentations will be held will be at the discretion of the Evaluation Committee. Presentations, if any, will be held on the dates specified in Section 1.03, Significant Dates (page 5). Offerors shall bear all responsibility for any and all costs of the presentations. The Evaluation Committee may accept proposals without discussions and may award a contract without any presentations by the offerors. The Evaluation Committee may also reject proposals without discussions or presentations by the offerors.

#### **1.11 BEST AND FINAL OFFERS**

Best and final offers may be requested by the Evaluation Committee. The Evaluation Committee will provide guidance and additional instructions at the time best and final offers are requested. Any best and final offers must be received by the Issuing Office at the time and date specified in the Section 1.03, Significant Dates (page 5). If best and final offers are not requested by the Evaluation Committee, or if requested, and it is not submitted by an offeror, the offeror's previous submittal will be construed as the offeror's best and final offer. After best and final offers are received, final evaluations will be conducted for an award. All proposals become the property of the EUTF.

#### **1.12 COSTS FOR PROPOSAL PREPARATION**

Any and all costs incurred by an offeror in preparing and submitting a proposal and conducting presentations shall be at the offeror's sole expense and are the offeror's sole responsibility. This includes the cost of any site visits by an offeror.



### **1.13 DISQUALIFICATION OF PROPOSALS**

The EUTF reserves the right to consider as acceptable only those proposals submitted in compliance with all the requirements set forth in this RFP and which demonstrate an understanding of the issues involved and the scope of work. Any proposal offering any other set of terms and conditions, or any terms or conditions contradictory to those included in this RFP, may be disqualified.

An offeror may be disqualified and the offeror's proposal may be rejected for any one or more of the following non-exclusive reasons as solely determined by the Evaluation Committee:

- A. Proposal is received after the established proposal submission deadline.
- B. Proposal is not properly completed or signed or fails to include notarized evidence of authority of the officer submitting the proposal to submit such proposal.
- C. Proposal is submitted on a form other than that furnished by the EUTF, or an exact copy thereof.
- D. Failure to possess proper licenses, facilities, equipment or sufficient professional experience to perform the benefit plan consultant services as proposed.
- E. Proposal shows any noncompliance with applicable laws, alterations of form, conditional proposals, incomplete proposals, un-initialed erasures, other defects, or prices which are obviously unbalanced.
- F. Failure to submit any required samples of consulting work.
- G. Failure to submit written answers to any questions from the Evaluation Committee or Procurement Officer.
- H. Being in arrears on existing contracts with the State, having defaulted on a previous State contract or being delinquent on tax payments due to the State of Hawaii.
- I. Adding on by the offeror of any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- J. If there is evidence to the Evaluation Committee's sole satisfaction that collusion exists among offerors, any or all proposals may be rejected and the participants in such collusion shall be barred from future proposal submissions.

### **1.14 RFP AMENDMENTS**

The EUTF reserves the right to amend this RFP at any time prior to the closing date for best and final offers.

## **1.15 CANCELLATION OF RFP; REJECTION OF PROPOSALS**

This RFP may be cancelled and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interests of the EUTF.

## **1.16 SELECTION AND EXECUTION OF CONTRACT**

Award, if any, shall be made to the responsible offeror whose proposal is the highest scoring and most responsive to the RFP. If award is made, the successful offeror will be required to enter into a formal written contract with the EUTF. A copy of the required form of contract and applicable General Conditions can be found in Section Six of this RFP. The RFP and the successful proposal will be incorporated in the resulting contract by reference; to the extent that they conflict, the terms of the RFP shall govern, unless otherwise agreed upon by the EUTF. HRS chapter 87A and the EUTF's administrative rules, as they may be amended from time to time, shall also be a part of the resulting contract.

## **1.17 RESPONSIBILITY OF OFFERORS**

Offeror is advised that if awarded a contract under this RFP, offeror shall, upon award of contract, furnish proof of compliance with the requirements of sections 103D-310, HRS, and §3-122-112, HAR. Due to the time required to obtain the required certificates of compliance, it is highly recommended that the certificates be submitted with the offeror's proposal.

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. One of the following:
  - a. Be a "Hawaii business"; or
  - b. Be a "compliant non-Hawaii business".

A "Hawaii business" is registered and incorporated or organized under the laws of the State of Hawaii ("State").

A "compliant non-Hawaii business" is not incorporated or organized under the laws of the State but is registered to do business in the State.

**HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to §103D-328, HRS, the offeror selected for an award of contract shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by the EUTF.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX *TAX CLEARANCE APPLICATION* Form A-6 (Rev. 2009) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website (Forms & Information): <http://www6.hawaii.gov/tax/2009/a6.pdf>  
DOTAX Forms by Fax/Mail: (808) 587-1488

Completed tax clearance applications may be mailed, faxed, or submitted in person to the Department of Taxation, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX:	(808) 587-1488
IRS:	(808) 539-1573

The application for the clearance is the responsibility of the offeror, and must be submitted directly to the DOTAX or IRS and not to the EUTF. However, the tax clearance certificate shall be submitted to the EUTF.

**HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.** Instructions are as follows:

Pursuant to §103D-310(c), HRS, offeror selected for an award of contract shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by the EUTF. A photocopy of the certificate is acceptable to the EUTF.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-112, HAR*, Form LIR#27 which is available at [www.dlir.state.hi.us/forms/ApplicationforCertificateofCompliance.pdf](http://www.dlir.state.hi.us/forms/ApplicationforCertificateofCompliance.pdf) or at the neighbor island DLIR District Offices. The DLIR will return the form to the offeror who in turn shall submit it to the EUTF.

The application for the certificate is the responsibility of the offeror, and must be submitted directly to the DLIR and not to the EUTF. However, the certificate shall be submitted to the EUTF.

**Compliance with Section 103D-310(c)(1) and (2), HRS.** Pursuant to section 3-122-112, HAR, the offeror selected for an award of contract shall be required to submit a *CERTIFICATE OF GOOD STANDING* (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by the EUTF. A photocopy of the certificate is acceptable to the EUTF.

To obtain the Certificate, the offeror must first be registered with the BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

On-line business registration and the Certificate are available at [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com). Offerors who wish to register or to obtain the Certificate by phone may call (808) 586-2727 (M-F 7:45 to 4:30 HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

**Timely Submission of all Certificates.** The above certificates should be applied for and submitted to the EUTF as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award or any such award may be cancelled.

**Final Payment Requirements.** Contractor is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

In addition to the tax clearance certificate, an original "Certification of Compliance for Final Payment" (SPO Form-22), will be required for final payment. A copy of the Form is available at [www.spo.hawaii.gov](http://www.spo.hawaii.gov). Select "Forms for Vendors/Contractors" from the Hawaii Public Procurement Code, Chapter 103D, HRS, menu.

#### **1.18 MULTI-TERM SOLICITATION; AVAILABILITY OF FUNDS**

This solicitation is or may be for a multi-term contract as described in § 3-122-149, HAR. It is anticipated that funds are available only for the contract through the fiscal year ending June 30, 2013. The contractual obligations of the parties in each subsequent fiscal period, if any, are subject to appropriation and availability of funds. The contract may be canceled or terminated if funds are not appropriated or otherwise not available to support continuation of the contract for any fiscal period.

## **SECTION TWO**

### **PROPOSAL**

#### **2.01 PROPOSAL PREPARATION**

This section of the RFP describes the proposal format, content, and requirements. The intent is to standardize proposals to a degree where comparisons may be made among the proposals using equitable measurements. This is not an attempt to limit the contents of any proposal and an offeror may include any additional information that it deems to be pertinent and that it believes would assist the Evaluation Committee in its review of the offeror's proposal. The proposal should be written in a clear, straightforward way, describing the offeror's response to the requirements of this RFP. The proposal should not include materials that are not essential to the proposal's utility and clarity.

Each responsive proposal will be reviewed by the Evaluation Committee (or its designees) for conformity with the requirements of the RFP. If asked for additional information by the Procurement Officer, offerors shall respond within two (2) business days, unless otherwise directed by the Procurement Officer.

Each proposal shall contain the following sections:

Proposal Transmittal Letter

Executive Summary

Proposal Form

- Schedule 1: Offeror's Background
- Schedule 2: Staff Resumes
- Schedule 3: List of Experts/Consultants
- Schedule 4: Methodology to Perform Contract
- Schedule 5: Samples of Work
- Schedule 6: Accessibility
- Schedule 7: List of Major Providers
- Schedule 8: List of Hawaii Clients
- Schedule 9: Premium Volumes
- Schedule 10: List of Clients
- Schedule 11: Tax Clearance Certificate
- Schedule 12: Wage Certification
- Schedule 13: Proposed Fees

#### **2.02 PROPOSAL TRANSMITTAL LETTER**

A transmittal letter must be included as part of the proposal. The transmittal must be on the offeror's business letterhead, signed by an individual authorized to legally bind the offeror, dated, notarized, and be affixed with the offeror's corporate seal, if any. Evidence shall be submitted showing the individual's authority to bind the offeror, e.g., corporate resolution, bylaws, etc.

The proposal transmittal letter shall also contain the following:

- A. Contact Person. The letter shall include the name of a duly authorized person that the EUTF is to contact regarding offeror's proposal, and that person's address, telephone/fax numbers, and e-mail address.
- B. Legal Entity. A statement indicating that the offeror is an individual, partnership, corporation, or other legal entity. If the offeror is a partnership, corporation, or other legal entity, the letter must state: (1) the date offeror was incorporated or organized; (2) the place where the offeror was incorporated or organized; (3) the offeror's principal place of business; (4) all states where the offeror is authorized to transact business; and (5) the names of all the offeror's parent, affiliate, and subsidiary organizations.
- C. Terms and Conditions. A statement that the offeror understands and will comply with all terms and conditions of the RFP (including the General Conditions). If an offeror does not plan to comply with any of the terms or conditions of the RFP, this must be stated and all exceptions listed and fully described.
- D. Assumptions or Constraints. A statement on whether the proposal contains any assumptions or constraints and identifying and describing each such assumption and constraint. If neither assumptions nor constraints are included in the proposal, a statement to that effect must be made.
- E. Deviations. If the proposal deviates from the specifications or requirements of the RFP, a statement must be included identifying and describing each such deviation. If no deviations are included in offeror's proposal, a statement to that effect must be made.
- F. Non-Discrimination. A statement of affirmative action stating that the offeror does not discriminate in employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, handicap or disability must be included.
- G. Subcontracting. A statement that the services and work described in the RFP shall be performed by the offeror and shall not be subcontracted or assigned without the prior written approval of the Contract Administrator.

## **2.03 EXECUTIVE SUMMARY**

The executive summary shall clearly and concisely summarize and highlight the contents of the proposal in such a way as to provide the Evaluation Committee with a broad understanding of the entire proposal.

## **2.04 PROPOSAL FORM**

Offerors shall submit proposals using the format of the blank Proposal Form attached as Appendix E. The proposal shall be prepared in full accordance with the instructions in the Proposal Form. Schedules, papers, and other information attached to or referred to in the Proposal Form shall be considered part of the offeror's proposal.

## **2.05 PROPOSED FEES**

On Schedule 13 to the Proposal Form, Offerors shall quote their proposed fees. Offerors must quote a price for the initial term of the contract, the optional extension period, each of the additional services, and additional contract work.

The offeror's proposed fees for the initial term of the contract shall be an all-inclusive fixed price for each year of the initial term of the contract. The fixed price must include all compensation, fees, and other amounts (including all applicable taxes) to be charged to the EUTF.

The offeror's proposed fees for the optional extension period of the contract shall be an all-inclusive fixed price for each year of the extension period. The fixed price must include all compensation, fees, and other amounts (including all applicable taxes) to be charged to the EUTF.

The offeror's proposed fees for each of the optional additional services may be an all-inclusive fixed price or a cost on an hourly basis. If quoted on an hourly basis, costs must be quoted for all primary and other employees who would perform the additional services. The fixed price or hourly cost must include all compensation, fees, and other amounts (including all applicable taxes) to be charged to the EUTF for the additional services.

The offeror's quoted price for additional contract work shall be a cost on an hourly basis. Prices shall be quoted for all primary and other employees who would perform the additional contract work. Prices shall be quoted that are applicable to each year of the initial term of the contract and for each year of the optional extension period. The hourly cost quoted must include all compensation, fees, and other amounts (including all applicable taxes) to be charged to the EUTF for additional contract work.

## **2.06 OFFER GUARANTY**

No offer guaranty is required for this RFP.

## **2.07 PERFORMANCE AND PAYMENT BONDS**

No performance bond is required for this RFP.

## **2.08 CONFIDENTIAL INFORMATION**

The offerors' proposals and all information, data, and other material provided by the offeror to the State shall be subject to the Uniform Information Practices Act, chapter 92F, HRS. The offeror shall designate in writing to the Procurement Officer those portions of its proposal that contain trade secrets or other proprietary data that are to remain confidential subject to section 3-122-58, HAR. The offeror shall state in its written communication to the Procurement Officer the reasons for designating the material as confidential. The offeror shall submit the material designated as confidential in such manner that the material is readily separable from the rest of offeror's proposal in order to facilitate inspection of the non-confidential portion of the proposal.

Offerors should note that they cannot designate their prices as confidential. Following award of the contract, all offerors' proposed prices will not be withheld from disclosure as confidential.

## **2.09 TAX CLEARANCE**

Pursuant to Section 103-53, HRS, prior to award of contract, the successful offeror is required to submit a Tax Clearance Certificate issued by the Hawaii Department of Taxation ("DOTAX") and the Internal Revenue Service ("IRS"). Information and tax clearance application forms can be obtained from DOTAX as follows:

DOTAX Website (Forms & Information): <http://www6.hawaii.gov/tax/2009/a6.pdf>

DOTAX Forms by Fax/Mail: (808) 587-1488

Completed tax clearance applications may be mailed to one of the district tax offices listed on the application form or faxed to one of the following numbers:

IRS	(808) 539-1573
DOTAX	(808) 587-1488

Please note that the successful offeror may also be required to obtain other certificates as proof of compliance with the requirements of Section 103D-310(c), HRS.

## **2.10 REFERENCES**

By submitting a proposal, offerors consent to the Evaluation Committee or its representatives contacting any or all of the clients or providers listed in offeror's proposal (including those listed in Schedules 7, 8, and 10 of the Proposal Form) to obtain information pertinent to this RFP, i.e., major providers of employee benefits, past and current clients, or other references.



**SECTION THREE**  
**PROPOSAL EVALUATION**

**3.01 INTRODUCTION**

The evaluation of proposals received in response to this RFP will be conducted comprehensively, fairly, and impartially. Price is not the sole factor in determining award of the contract.

**3.02 EVALUATION ORGANIZATION**

All proposals will be reviewed by the Evaluation Committee. It is anticipated that for this RFP, the Evaluation Committee will be the Board or a committee thereof.

**3.03 EVALUATION CRITERIA**

**A. Evaluation of Mandatory Requirements/Establishment of Priority List of Applicants**

**1. General Criteria: Points**

a.	Completeness of the offeror's proposal with regard to information requested including samples of consulting work submitted.	Pass /Fail
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b.	Costs for the initial term of the contract and the two year optional extension period. Points will be awarded based on the formula in HAR § 3-122-52(d).	15
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**2. Specific Criteria: Points**

a.	Extent of knowledge of employee benefit plans and insurance markets. Points will be awarded or deducted based on the scope and extent of the offeror's knowledge of employee benefit plans and insurance markets in the following categories: <ul style="list-style-type: none"><li>- Current self insured benefit plans offered to State, Federal, trades and other private sector buyers in the Hawaii market.</li><li>- Current insured benefit plans offered to State, Federal, trades and other private sector buyers in the Hawaii market.</li><li>- Other employee benefit plans (insured and self-</li></ul>	15
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	<p>insured) offered outside of Hawaii by out-of-state vendors which may be applicable or modified for use by the EUTF and comparisons of the federal and state laws applicable to these plans.</p> <ul style="list-style-type: none"> <li>- Current trends and practices, in and outside of Hawaii, relating to employee benefit plans, health and insurance benefit plan programs, and insurance markets, including, but not limited to, the design and procurement of employee benefit plans, the administration and operation of such plans, and ideas and methods for decreasing costs and improving the performance of such plans.</li> </ul>	
b.	<p>Extent of knowledge of the EUTF's employee benefit plans for State and county employees and retirees. Points will be awarded or deducted based on the scope and extent of offeror's knowledge of the EUTF plans and the laws applicable to those plans, including, but not limited to, Chapters 87A and 89 HRS. With regards to the foregoing, points will be awarded or deducted in the following categories:</p> <ul style="list-style-type: none"> <li>- Benefits, terms and conditions, procedures, policies, and status of EUTF employee benefit plans.</li> <li>- Roles and relationships of Board, Administrator, EUTF staff, Benefits Consultant, Attorney General's Office, public employers, exclusive representatives, employee organization plans, and beneficiaries.</li> <li>- Impact of collective bargaining agreements as they affect the EUTF benefit plan program.</li> <li>- Federal, state, and local laws that apply to the EUTF employee benefits plans or that relate to the State and county employees, retirees and dependents covered by such plans, including, but not limited to, HIPAA, COBRA, Medicare, federal tax laws, and state insurance laws and regulations.</li> </ul>	10

c.	<p>Extent of professional experience and favorable reputation in field of employee benefits consulting services. Points will be awarded or deducted based on the scope and extent of the professional experience of offeror's staff, particularly those that will be assigned to service the EUTF, and the nature of any comments received from offeror's references or others with information about offeror. In awarding or deducting points, the Board will take into account the following:</p> <ul style="list-style-type: none"> <li>- Offerors must have a favorable reputation with their employee benefit plan clients.</li> <li>- Primary employee(s) assigned to this contract must have a minimum of ten years of professional employee benefit plan consulting work experience and have worked on large private and public sector client groups of 10,000 persons or more with health and other employee benefit plans similar to those provided by the EUTF and which may be provided under Chapter 87A, HRS.</li> <li>- The primary employee(s) assigned to this contract must have a minimum of ten years experience with collectively bargained defined contribution trust fund benefit plans, both insured and self-insured.</li> </ul>	20
d.	<p>Scope and extent of ability to support the requirements of the EUTF. Points will be awarded or deducted based on the offeror's ability and capabilities to service the EUTF. Points will be awarded and deducted with regards to the following:</p> <ul style="list-style-type: none"> <li>- Extent of professional experience in providing services to and advising <b>self-funded</b> health and other benefits plans, including but not limited to designing self-funded employee health and other benefit plans, calculating self-fund rates, setting reserves and financial requirements, procurement of administrators for self-funded plans, negotiating contract terms with plan administrators, the administration and management of self-funded plans, legal and regulatory requirements for self-funded plans, grievances and appeals processes, information and communication materials, auditing self-insured plans, monitoring, evaluating and reporting on the administration and performance of self-funded plans.</li> <li>- Extent of professional experience in providing services to and advising <b>insured</b> health and other</li> </ul>	20

	<p>benefits plans including, but not limited to, designing employee health and other benefit plans, reviewing insured plan rates, procurement of insured plans, negotiating contract terms with insurance carriers, the administration and management of insured, legal and regulatory requirements for insured, grievances and appeals processes, information and communication materials, auditing of insured plans, monitoring, evaluating and reporting on the administration and performance of insured plans.</p> <ul style="list-style-type: none"> <li>- Ability to provide all the services in the RFP, including, but not limited to, all parts of the Scope of Work.</li> <li>- The nature and extent of the services, capabilities and experience that can be provided by the offeror, e.g., legal, regulatory and communication expertise, web design experience, computer and technological capabilities, and abilities and capabilities to perform other services described in the RFP.</li> </ul>	
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e.	<p>Accessibility. Points will be awarded or deducted based on the extent that offeror is accessible to the Board, Administrator, EUTF staff and consultants, and EUTF vendors, including accessibility in the following categories:</p> <ul style="list-style-type: none"> <li>- Offeror is accessible and able to meet in person and participate in meetings with the Board, Administrator, EUTF staff, Attorney General's Office, insurance carriers, plan administrators, etc.</li> <li>- Offeror's in-house or ready access to information and professional services from experts and other qualified persons about legislation and laws pertaining to employee benefit plans, the design of employee benefit plans, benefit plan and contract administration, communicating plan benefits, trust fund management and operating procedures, etc.</li> </ul>	10
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f.	<p>Offeror's list of creative ideas and suggestions to improve the EUTF's benefit plans. Points will be awarded or deducted based on the nature and extent of any creative ideas that offeror evidences in its proposal in terms of insurance coverages, computations or negotiations of monthly premium rates, contract provisions, preferred provider organizations, benefit plan administration, self insurance and alternative methods of financing benefit plans, communication materials, enrollment forms and procedures, etc. Offerors will be evaluated based on how useful or practical the creative ideas and suggestions are, how much value (monetary and non-monetary) they would have to the EUTF, and how innovative the ideas and suggestions are.</p>	10
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## **SECTION FOUR**

### **SCOPE OF WORK**

#### **4.01 OBJECTIVE**

If awarded a contract to provide benefit plan consulting services for the EUTF, the consultant agrees to provide the following professional services in a satisfactory, timely and proper manner, in accordance with the directions of the Board, and subject to any limitations imposed by the Board.

#### **4.02 SPECIFICATIONS**

##### **A. General Analysis and Evaluation of Existing Contract and Benefit Plans**

Throughout the term of the contract, the consultant shall provide the Board with analyses, evaluations, and advice as follows.

Within 90 days of entry into the contract, the consultant shall provide a report to the Board analyzing and evaluating all of the current benefit plans being offered by the EUTF including benefits, plan coverages, premiums and rates, plan administration fees and costs, contract terms with insurance carriers and self-funded plan administrators, services and programs provided by insurance carriers and self-funded plan administrators, funding and reserves, and other matters relating to the performance and operations of the plans for the purpose of recommending improvements, modifications or revisions to be considered by the Board. Consultant's report shall include any improvements, modifications or revisions that are necessary to ensure that the plans comply with applicable federal and State laws. Consultant's analysis shall include an evaluation of the EUTF's finances, sufficiency of funding and reserves, terms of carrier and plan administrator contracts, and other available data.

On an on-going basis, the consultant shall analyze and evaluate all benefit plans being offered to State and county employees, retirees and their dependents, including benefits, plan coverages, premiums and rates, plan administration fees and costs, claim utilization, contract terms with and the performance of insurance carriers and self-funded plan administrators, services and programs provided by insurance carriers and self-funded plan administrators, funding and reserves, and other matters relating to operations of the plans for the purpose of recommending improvements, modifications or revisions to be considered by the Board. Without limiting the foregoing, the consultant's analysis shall include: (a) evaluations of the EUTF's finances including the sufficiency of EUTF funding and reserves; (b) evaluations and recommendations regarding the EUTF plans' compliance with applicable federal and State laws; (c) recommendations regarding improvements to the EUTF's plans and operations based on new developments regarding benefits plans or benefit plan practices and procedures; and (d) recommended changes in contract terms or procedures with carriers or plan administrators. As requested by the Board, the consultant shall analyze and evaluate the EUTF's

options regarding types of benefit plans not currently being offered through the EUTF and shall provide information and advice to the Board so as to enable it to decide whether or not to offer such plans.

#### B. EUTF Contracts and Benefit Plans

The following shall be performed by the consultant during the term of the contract and any extensions thereof, with respect to all on-going contracts that the EUTF has entered into with insurance carriers and administrators for insured and self-funded benefit plans it has implemented:

Annual analysis and evaluation of all EUTF benefit plan contracts, contract extensions and amendments, benefit plans coverage, monthly employee and retiree premiums and rates, plan administration fees and costs, claim utilization, funding and reserves, performance reports, and all other reviews and evaluations as necessary to assure the Board that all of the EUTF's contracts and benefits are in compliance with applicable contract terms and all applicable federal and state laws.

By October 1, the consultant shall submit a report to the Board compiling, evaluating, and making recommendations regarding the next fiscal year's monthly rates, benefit plan changes, and other changes for: (a) the EUTF's self-funded plans, including changes proposed by the plan administrators for such plans; and (b) the EUTF's insured plans, including changes proposed by the contracted insurance carriers. In making its recommendations, the consultant should address the requirements of HRS § 87A-15 which provides that EUTF employee benefit plans shall be offered at a cost affordable to both the public employers and public employees.

Working with the State Attorney General's office and the Administrator, the consultant, at the direction of the Board, shall provide advice, negotiate, and assist in the drafting and preparation of contract documents for signature by the Administrator and the insurance carriers or self-funded plan administrators.

#### C. New EUTF Contracts and Benefit Plans

The following shall be performed by the consultant during the term of the contract and any extensions thereof, where: (1) it is expected that the EUTF's contracts with insurance carriers or self-funded plan administrators will be expiring or are expected to be terminated, (2) the EUTF is considering contract extensions, (3) it is expected that the EUTF will be replacing the benefit plans that it offers, or (4) the EUTF will be offering new benefit plans:

By August 31 or such other date as designated by the Board, the consultant shall design, prepare and issue specifications or requests for proposals on new benefit plans or modification of plans as directed by the Board.

By November 1 or such other date as designated by the Board, the consultant shall submit a report to the Board summarizing and evaluating each proposed benefit plan, including, but not limited to: (a) for insured plans, the proposed monthly

premiums per active and retired employees, proposed benefits, and other significant features of each proposed plan, (b) for self-funded plans, the self-funded plan administrator's proposed monthly fees or other compensation, proposed services, and other significant features of each self-funded plan proposal, plus the consultant's recommended rates, benefits, and other features for the proposed plan.

By December 1 or such other date as designated by the Board, the consultant shall complete preliminary negotiations regarding rates, fees, benefits, and services with the insurance carriers and/or plan administrators who have proposed benefits plans or modifications of plans and submit a report to the Board summarizing the consultant's findings and recommendations. The consultant's report shall include proposed benefits plans or modifications of plans and rates for EUTF self-funded plans.

Working with the State Attorney General's Office and Administrator, the consultant at the direction of the Board shall provide advice, negotiate, and assist in the drafting and preparation of contract documents for signature by the Administrator and insurance carriers or self-funded plan administrators.

By October 1 of the next calendar year or such other date as designated by the Board, the consultant shall prepare a special report evaluating the implementation, administration and financial impact of new or modified benefit plans or benefit plan improvements or reductions which began on July 1 or on another effective date.

#### D. Program Management

The consultant shall provide the following advice, services, and reports regarding the EUTF's benefit plan program, administration, and operations:

1. As requested by the Administrator, the consultant shall review, advise, and assist in the planning, design, and drafting of the EUTF's enrollment applications, summary program descriptions, reference guides, manuals, brochures, audio-visual presentations, training materials, and other enrollment and communication materials for the purpose of improving the communications tools that the EUTF and State and county employing agencies use to service eligible beneficiaries and their dependents regarding benefit plans offered by the EUTF. In addition, the consultant shall advise and assist in the training of EUTF staff and State and county employing agency personnel regarding the benefits and other significant features of EUTF benefit plans.
2. The consultant shall prepare reference guides and/or manuals for the EUTF's open enrollment period, including: (a) overall responsibility for preparation, drafting, and readying for print the reference guides; (b) determining the subjects to be covered by the reference guides; (c) researching information to be put in the reference guides; (d) drafting all sections of the reference guides; (e) reviewing sections of the reference guides if drafted by others; and (f) formatting and readying for final print the reference guides by January 31 of the year of the open enrollment period or by some other date as specified by the Administrator.



3. The consultant shall review and advise the EUTF regarding the form, content and functionality of its website. The consultant shall assist the EUTF in making its website user-friendly, comprehensive, and capable of offering employees/retirees/ dependents on-line services that are on par with or better than other similar large employee benefit plans.
4. Provide training to the Board and EUTF staff, as requested, in areas such as COBRA, HIPAA, privacy and security laws and procedures, etc.
5. By January 15 or such other date as specified by the Administrator, the consultant shall review the EUTF's open enrollment reference guides, brochures, news bulletins, and other open enrollment materials, including each carrier's and plan administrator's proposed summary plan description, disclosure of benefit plan changes, major contract provisions, and other materials, and advise the Administrator as to any needed or desired changes or additions to such materials. In addition, as requested by the Administrator, the consultant shall provide information, assistance, and advice regarding the EUTF's open enrollment programs and procedures. By January 15 or such other date as specified by the Administrator, the consultant shall also advise the Administrator as to implementation or integration of new or modified benefit plans or other plan improvements, if any, into the EUTF's operations.
6. Review items in Nos. 1 and 4 above for content, accuracy and compliance with federal and State laws, any applicable collective bargaining agreements , etc. This includes but is not limited to areas such as COBRA, HIPAA, etc.
7. Provide information, advice, and recommendations on benefit plan administration, management techniques, operations, and support systems, including the EUTF's rules and any proposed rule changes, the EUTF's information management system and proposals regarding that system, policies and procedures to streamline the EUTF's centralized enrollment, premium payment, and administrative operations, etc. Without limiting the foregoing, the consultant shall advise and assist the EUTF in drafting or revising rules, policies, and procedures for handling: (a) grievances, claims, and appeals made by participants in EUTF plans; (b) subrogation claims; and (c) claims that the EUTF has against persons or entities for fraud, abuse, or other matters related to its operation of its plans.
8. Provide information, advice and assistance to the Board and EUTF staff regarding grievances, claims, or appeals that are presented to the EUTF.
9. Assist the Board and EUTF staff in drafting and submitting claims and information to third parties regarding EUTF operations and programs, including insurance carriers, Medicare, federal and state governmental agencies, etc.
10. Provide assistance and advice regarding the calculation and allocation of administrative fees charged by the EUTF, including proposing methodologies for the calculation and allocation of such fees and performing such calculations and allocations.

11. Assist the Board and EUTF staff in responding to letters from governmental entities or third parties regarding EUTF programs, operations, and plans.

#### E. Reports

1. Annual Report to the Board of Trustees

By December 1, prepare a comprehensive Annual Plan Year report covering each major aspect of the EUTF's benefit plans:

- a. Summary of premium payments to insurance carriers, compensation paid to self-funded plan administrators, Medicare Part B premium reimbursements paid to retirees, etc. (data to be provided by Administrator), and other fees and costs of administration of the EUTF benefit plans;
- b. Enrollment under the various benefit plans;
- c. Relationship between premiums for insured plans, rates for self-funded plans and claims;
- d. Analyses of benefits paid, including breakdowns by bargaining unit;
- e. Performance of contracted insurance carriers;
- f. Performance of EUTF's self-funded plans and the administrators of such plans, and
- g. Comparison of EUTF plan benefits and rates to large employer plans in the State and similar governmental plans outside of the State.
- h. Other significant issues, e.g., future cost projections, etc.

Forty (48) copies of the Annual Report shall be sent to the Board within 30 days following presentation to the Board.

2. Quarterly and Special Reports

- a. Prepare quarterly reports, compilations, and analyses of EUTF benefit plan enrollment data, claims experience, benefits provided or paid, reserves maintained for self-funded plans, and any reserve funds held by insurance carriers.
- b. Prepare special reports, surveys and analyses on current or future benefit plans, unusual trends in contracted premiums or self-funded plan rates and claims experience, rules and regulations and legislative or other governmental actions, new developments in health and other benefits plans, and other matters related to the operation and administration of employee benefit plans. Submit alternatives to provide or improve the current level of benefits, reduce costs of benefits, or

provide more cost-efficient benefits; e.g., self-insurance, restructuring of current benefit plans, tradeoffs, etc.

The consultant shall deliver 48 copies of quarterly and special reports to the Administrator within 30 days after presentation to the Board. The consultant shall be available to discuss such reports with the Administrator, Board Chair and Committee Chairs prior to such meeting dates.

#### F. Legislative and Legal Matters

If and to the extent requested by the Board, the consultant shall assist the Board in legislative matters including, but not limited to: preparing legislative amendments to facilitate the operations of the EUTF; analyzing and making recommendations regarding legislative bills affecting the EUTF; preparing and giving testimony on legislative bills affecting the EUTF; and assisting in the preparation and presentation of reports concerning the operations of the EUTF to legislative and other government bodies, public employers, employee-organizations, and the public.

The consultant shall provide information, advice, and assistance to the EUTF staff regarding federal and state laws that are or may be applicable to the EUTF's health and other benefit plans including, but not limited to, HIPAA, COBRA, FMLA, USERRA, Medicare, and tax and insurance laws.

As requested by the EUTF's attorney, including the State Attorney General's office, the consultant shall provide information, advice, and assistance regarding any claims involving the EUTF or legal proceedings to which the EUTF or Board is a party.

#### G. Meetings

##### 1. Attendance at Trustees Meetings or Conferences

The consultant shall be available at all reasonable times to the Board, its Committees and the Administrator to provide advice and recommendations regarding the operation, administration and/or management of the EUTF's benefit plans.

The consultant shall attend the Board's regular, special and Committee meetings, and such conferences with personnel affiliated with the EUTF as may be required by the Board or the Administrator.

##### 2. Meetings with the Administrator and Board Chair

The consultant shall be available to meet with the Administrator, Committee Chairs and Board Chair monthly for as long as may be necessary to discuss, plan, improve, or implement EUTF administration activities, draft or analyze legislation, or review other special issues. These meetings shall generally take place immediately before and/or after a regular Board or Committee meeting and at times mutually agreeable to the Administrator, Board Chair, Committee Chairs and Consultant.

### 3. Meetings with EUTF Insurance Carriers and Plan Administrators

The consultant shall meet with the EUTF's insurance carriers and self-funded plan administrators to negotiate rates, fees or other compensation, benefit plans coverages, administrative services, and other benefit plan matters on behalf of the EUTF, subject to the Board's final approval, e.g., assist in resolving difficult claims, discuss contract administration, program issues, pending and proposed legislation, and quarterly benefit plan performance, and review carriers' benefit plan enrollment and claims processing procedures.

#### H. HIPAA Privacy and Security Rules

The consultant shall provide on-going assistance by: (a) notifying EUTF staff of changes in the HIPAA Privacy and Security Rules and the enactment of other laws containing provisions regarding privacy and security requirements that apply to the EUTF; (b) performing periodic assessments of the EUTF's efforts to comply with the HIPAA Privacy and Security Rules and other laws containing provisions regarding privacy and security requirements that apply to the EUTF, including assisting the EUTF in updating its privacy and security policies, procedures, and notices; (c) responding to problems in connection with the EUTF's efforts to comply with the HIPAA Privacy and Security Rules and other laws containing provisions regarding privacy and security requirements that apply to the EUTF; and (d) being available to answer questions that arise regarding the EUTF's efforts to comply with the HIPAA Privacy and Security Rules and other laws containing provisions regarding privacy and security requirements that apply to the EUTF. On an as needed basis, the consultant shall also provide training of the EUTF staff in regards to the HIPAA Privacy and Security Rules and other laws containing provisions regarding privacy and security requirements that apply to the EUTF.

#### I. COBRA

The consultant shall provide on-going assistance by: (a) notifying the EUTF staff of any changes in COBRA laws, rules, and regulations; (b) performing periodic assessment of the EUTF's efforts to comply with COBRA laws, rules and regulations, including assisting the EUTF in updating its COBRA procedure manual; (c) and being available to answer questions that arise regarding EUTF's efforts to comply with COBRA laws, rules, and regulations. The consultant shall also provide training of the EUTF staff in regards to the COBRA laws, rules, and regulations on an as needed basis.

#### J. General Consulting Advice

The consultant shall be readily available to the EUTF staff on a daily basis. On an ongoing basis, the consultant shall keep the Board and Administrator informed and advised as to trends, developments, and changes that may affect the operation and administration of the EUTF and its benefit plans. In addition, the consultant shall provide advice and recommendations to the Board and Administrator regarding such trends, developments, and changes. The trends, developments and changes covered by this Section include, but are not limited to: new or

anticipated changes in legislation, regulations, policies and procedures of governments and government agencies; developments or trends in the nature and types of benefit plans available locally and nationally; developments or trends in the administration or operation of employee benefit plans locally and nationally; developments, changes or trends in the health, life and other relevant insurance markets locally and nationally.

#### K. Optional Additional Services

At the option of the Board, the consultant shall provide any or all of the following additional services:

##### 1. Open Enrollment Sessions

The consultant shall conduct open enrollment sessions for the EUTF, including neighbor island sessions. The information presented shall be comprehensive and easy to understand. The content of the open enrollment sessions must have prior approval of the EUTF.

##### 2. Implementation of Recommendations

The consultant shall provide professional services and advice to implement recommendations made by the consultant in reports presented to the Board or Administrator.

##### 3. On-site Visits of Prospective Contractors

The consultant shall plan, coordinate and conduct on-site visits of prospective contractors for third-party administrative services, computer services, and/or computer software to support the operations of the EUTF. The purpose of the on-site visit is to ascertain whether the prospective contractors are capable of providing services as set forth in their proposals given in response to a request for proposal from the EUTF. The on-site visits may include, but not be limited to, reviewing and testing the prospective contractors' (or applicable client thereof) computer systems, software, programs, operations and related equipment. The consultant shall provide a written analysis and report within 21 days following completion of site visits relating to a particular request for proposal of the EUTF.

##### 4. Training of EUTF Staff, and Other Parties

The consultant shall plan, coordinate and present training of EUTF staff, public employer personnel such as department personnel officers (DPO's), and other parties affiliated with the EUTF regarding EUTF administration, operations, enrollment, and/or communications of particular regulations, requirements, new or existing benefit plans, or other subjects identified in the scope of work set forth in this RFP and/or in the contract.

## 5. Preparation and Management of RFP's

The consultant shall prepare requests for proposal (RFP's) for services to the EUTF other than for provision of health benefit or life insurance plans (covered in Section 4.02.C, above). Services provided may be limited to preparing an RFP for issuance, or services may include preparing, issuing and managing the RFP process through selection of a proposal and finalizing a contract. Services for preparing an RFP shall include but not be limited to advising the Administrator on the overall design and contents of the RFP and RFP process; advising the Administrator regarding the information, scope of services, contract requirements and other content of the RFP; drafting, reviewing and/or revising sections of the RFP (or the entire RFP); summarizing and presenting the RFP for consideration of the Board; and working with the Board's attorney and the State's Procurement Office (SPO) to finalize and issue the RFP. Services for management of the RFP process shall include but not be limited to all the services for preparing an RFP described in this paragraph; preparing for and conducting a pre-proposal meeting for offerors; preparing written responses to questions from offerors; advising the Administrator and Board regarding the necessity to issue amendments to the RFP and drafting any needed amendments; determining whether proposals meet the minimum requirements of the RFP; analyzing and summarizing proposals to assist the procurement officer or evaluation committee in evaluating proposals; coordinating and/or conducting best and final offer meetings with offerors; negotiating final terms with one or more offerors; presenting the recommendation of the procurement officer or evaluation committee to the Board; and providing such other related services as are reasonably necessary to enable the Administrator and Board to award (or not) a contract under the RFP.

## J. Additional Contract Work

If the Board authorizes the consultant to provide work or services that are outside the scope of work agreed to in the contract between the EUTF and the consultant, such additional work or services shall be provided for a fee to be mutually agreed upon between the consultant and the Board. Unless expressly authorized by the Board, no payment for additional work or services shall be made by the EUTF for additional work or services unless a fee is agreed upon in advance of the work or services being performed.

## **SECTION FIVE**

### **SPECIAL CONDITIONS**

#### **5.01 COMMISSIONS PROHIBITED**

It is expressly understood that the consultant shall not receive any commissions, in-kind benefits, or fees from health care providers, insurance carriers, or employee organizations for any work performed under the contract resulting from this RFP.

#### **5.02 CONFLICT OF INTEREST**

The consultant shall fully disclose its contractual relationship with and any other arrangement (that may raise conflict of interest issues) that it has with:

1. The public employers or employee organizations identified in Chapter 87A, HRS, and/or
2. Any insurance carriers or other third parties that provide or may provide insurance coverage or perform other benefit plan administrative services for the EUTF and/or the public employers or employee organizations identified in Chapter 87A, HRS.

The Board reserves the right to require the consultant to terminate any and all contractual relationships and/or arrangements that raise conflict of interest issues as a condition to the Board's entry into a contract with the consultant. During the term of the contract, the consultant shall not enter into any contractual relationship, arrangement, or other situation that raises a conflict of interest with its performing consulting services for the Board and the EUTF.

#### **5.03 HIPAA AND BUSINESS ASSOCIATE AGREEMENT**

The EUTF is or may be a "covered entity" under the Health Insurance Portability and Accountability Act of 1996, as the same may be amended from time to time ("HIPAA"), and the regulations passed there under, including, but not limited to, the Privacy and Security Rules (45 C.F.R. Parts 160 and 164). As part of its duties and responsibilities under the contract, consultant shall assist the EUTF in complying with HIPAA and all regulations passed there under. As a condition to the award of contract and continuance of that contract, consultant shall enter into and fully comply with a business associate agreement with the EUTF in form and content satisfactory to the EUTF. A draft form of the required business associate agreement is shown in Appendix F.

#### **5.04 INSURANCE**

The consultant is responsible for securing all employee-related insurance coverage for the consultant and the consultant's employees and agents that is or may be required by law, and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage.

At its sole cost and expense, the consultant shall obtain and keep in force throughout the entire term of the contract and any extensions thereof, the following types of insurance, in the minimum amounts specified and in the form hereinafter provided for:

1. A standard professional liability insurance policy that covers claims resulting from errors or omissions in providing consulting services under the contract. The policy shall have limits of liability, per occurrence and in the aggregate, in amounts that are reasonably satisfactory to the Board. Initially, the professional liability insurance policy must have limits of liability in the amount of at least FIVE MILLION AND NO/100 DOLLARS (\$5,000,000), per occurrence and in the aggregate. The professional liability policy shall be endorsed to provide that it is primary insurance and not contributing or excess over any coverage that the EUTF, Board or State of Hawaii may carry.
2. Any and all other insurance that is required by applicable law and that is reasonably necessary in order for consultant to perform the work and services required under the contract. The insurance policies shall have limits of liability, per occurrence and in the aggregate, in amounts that are reasonably satisfactory to the Board, as measured by what a reasonably prudent trustee would require of a consultant in similar circumstances.
3. The adequacy of the coverage afforded by the consultant's insurance shall be subject to review by the Board, from time to time, and if it appears that a reasonably prudent trustee, operating a trust fund similar to that operated by the Board, would require an increase in the limits of liability of such insurance, consultant shall to that extent take all necessary actions to increase such limits.
4. All the required insurance shall be carried with insurance carriers that have a general policyholder's rating of not less than A and a financial size category rating of no less than XIV in the most current Best's Insurance Reports. If the Best's ratings are changed or discontinued, the parties shall agree to an equivalent method of rating insurance companies.
5. Throughout the entire term of the contract, the EUTF, the Board and its trustees shall be named as additional insureds on all the insurance policies required hereunder. At the commencement of the contract the consultant shall provide the Board with certificates of insurance showing that the consultant is carrying all the insurance required hereunder. At or prior to the expiration of all insurance policies required hereunder, the consultant shall provide the Board with certificates of insurance showing the renewal or replacement of such insurance policies. All policies of insurance shall provide that the Board will be given thirty (30) days notice in writing in advance of any cancellation, lapse or reduction in the amount of insurance.

#### **5.05 LIQUIDATED DAMAGES**

Liquidated damages shall be assessed in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000) per calendar day, in accordance with the terms of the General Conditions.



## **5.06 NOTICES**

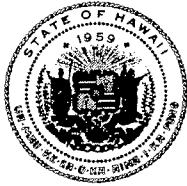
Any written notice(s) required to be given by a party to the contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the Board c/o of the Department of Finance in Honolulu, Hawaii, or to the consultant at the consultant's address as stated in the contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The consultant is responsible for notifying the Board in writing of any change of address.

## **5.07 CONFLICT BETWEEN SPECIAL CONDITIONS AND GENERAL CONDITIONS**

If there is a conflict between any of the terms or conditions of these Special Conditions and the terms or conditions of the General Conditions, Form AG-008 Rev. 4/15/2009, the terms and conditions of these Special Conditions shall control and govern the terms of the contract between consultant and the EUTF.

The following paragraphs of the General Conditions shall not be a part of any contract resulting from this RFP: Paragraph 22 (Variation in Quantity for Definite Quantity Contracts) and Paragraph 23 (Changes in Cost-Reimbursement Contract).

**SECTION SIX**  
**CONTRACT AND GENERAL CONDITIONS**



**STATE OF HAWAII**  
**CONTRACT FOR GOODS OR SERVICES**  
**BASED UPON**  
**COMPETITIVE SEALED PROPOSALS**

This Contract, executed on the respective dates indicated below, is effective as of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_,  
(Insert name of state department, agency, board or commission)  
State of Hawaii ("STATE"), by its \_\_\_\_\_,  
(Insert title of person signing for State)  
(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")),  
whose address is \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_  
("CONTRACTOR"), a \_\_\_\_\_  
(Insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the Contractor)  
under the laws of the State of \_\_\_\_\_, whose business address and federal  
and state taxpayer identification numbers are as follows: \_\_\_\_\_

**RECITALS**

A. The STATE desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Contract and its attachments, and the CONTRACTOR is agreeable to providing said goods or services or both.

B. The STATE has issued a request for competitive sealed proposals, and has received and reviewed proposals submitted in response to the request.

C. The solicitation for proposals and the selection of the CONTRACTOR were made in accordance with section 103D-303, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules, Title 3, Department of Accounting and General Services, Subtitle 11 ("HAR"), Chapter 122, Subchapter 6, and applicable procedures established by the appropriate Chief Procurement Officer ("CPO").

D. The CONTRACTOR has been identified as the responsible and responsive offeror whose proposal is the most advantageous for the STATE, taking into consideration price and the evaluation factors set forth in the request.

E. Pursuant to \_\_\_\_\_, the STATE  
(Legal authority to enter into this Contract)  
is authorized to enter into this Contract.

F. Money is available to fund this Contract pursuant to:

(1) \_\_\_\_\_  
(Identify state sources)

or (2) \_\_\_\_\_  
(Identify federal sources)

or both, in the following amounts: State \$ \_\_\_\_\_  
Federal \$ \_\_\_\_\_

NOW, THEREFORE, in consideration of the promises contained in this Contract, the STATE and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the STATE, provide all the goods or services, or both, set forth in the request for competitive sealed proposals number \_\_\_\_\_ ("RFP") and the CONTRACTOR'S accepted proposal ("Proposal"), both of which, even if not physically attached to this Contract, are made a part of this Contract.

2. Compensation. The CONTRACTOR shall be compensated for goods supplied

or services performed, or both, under this Contract in a total amount not to exceed \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), including approved costs incurred and taxes, at the time and in the manner set forth in the RFP and CONTRACTOR'S Proposal.

3. Time of Performance. The services or goods required of the CONTRACTOR under this Contract shall be performed and completed in accordance with the Time of Performance set forth in Attachment-S3, which is made a part of this Contract.

4. Bonds. The CONTRACTOR ☐ is required to provide or ☐ is not required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_).

5. Standards of Conduct Declaration. The Standards of Conduct Declaration of the CONTRACTOR is attached to and made a part of this Contract.

6. Other Terms and Conditions. The General Conditions and any Special Conditions are attached to and made a part of this Contract. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Contract, including all attachments and addenda; (2) the RFP, including all attachments and addenda; and (3) the Proposal.

7. Liquidated Damages. Liquidated damages shall be assessed in the amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice to the STATE shall be sent to the HOPA'S address indicated in the Contract. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address indicated in the Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the STATE in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

### STATE

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

### CONTRACTOR

CORPORATE SEAL

(If available)

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) SS.  
\_\_\_\_\_ COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me appeared  
\_\_\_\_\_ and \_\_\_\_\_, to me  
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are  
\_\_\_\_\_ and \_\_\_\_\_ of  
\_\_\_\_\_, the  
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said  
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said  
instrument as the free act and deed of the CONTRACTOR.

(Notary Stamp or Seal)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Doc. Date: \_\_\_\_\_ # Pages: \_\_\_\_\_

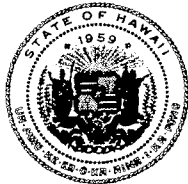
Notary Name: \_\_\_\_\_ Circuit \_\_\_\_\_

Doc. Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Notary Stamp or Seal)

\_\_\_\_\_  
Notary Signature Date

NOTARY CERTIFICATION



## STATE OF HAWAII

# CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Agency" means and includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices; and all independent commissions and other establishments of the state government but excluding the courts.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges. (Section 84-3, HRS).

On behalf of \_\_\_\_\_, CONTRACTOR, the undersigned does declare as follows:

1. CONTRACTOR ☐ is\* ☐ is not a legislator or an employee or a business in which a legislator or an employee has a controlling interest. (Section 84-15(a), HRS).
2. CONTRACTOR has not been represented or assisted personally in the matter by an individual who has been an employee of the agency awarding this Contract within the preceding two years and who participated while so employed in the matter with which the Contract is directly concerned. (Section 84-15(b), HRS).
3. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of this Contract, if the legislator or employee had been involved in the development or award of the Contract. (Section 84-14 (d), HRS).
4. CONTRACTOR has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an agency employee, or in the case of the Legislature, a legislator, and participated while an employee or legislator on matters related to this Contract. (Sections 84-18(b) and (c), HRS).

CONTRACTOR understands that the Contract to which this document is attached is voidable on behalf of the STATE if this Contract was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the STATE.

\* Reminder to Agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$10,000, the Contract must be awarded by competitive sealed bidding under section 103D-302, HRS, or a competitive sealed proposal under section 103D-303, HRS. Otherwise, the Agency may not award the Contract unless it posts a notice of its intent to award it and files a copy of the notice with the State Ethics Commission. (Section 84-15(a), HRS).

### CONTRACTOR

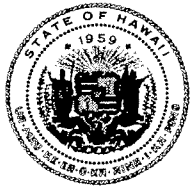
By \_\_\_\_\_  
(Signature)

Print Name \_\_\_\_\_

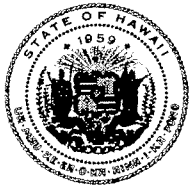
Print Title \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Date \_\_\_\_\_



**STATE OF HAWAII**  
**SCOPE OF SERVICES**



**STATE OF HAWAII**

**COMPENSATION AND PAYMENT SCHEDULE**





**STATE OF HAWAII**  
**TIME OF PERFORMANCE**



STATE OF HAWAII

**CERTIFICATE OF EXEMPTION  
FROM CIVIL SERVICE**

**1. By Heads of Departments Delegated by the Director of the Department of Human Resources Development (“DHRD”).\***

Pursuant to a delegation of the authority by the Director of DHRD, I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, Hawaii Revised Statutes (HRS).

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\* This part of the form may be used by all department heads and the heads of attached agencies to whom the Director of DHRD expressly has delegated authority to certify § 76-16, HRS, civil service exemptions. The specific paragraph(s) of § 76-16, HRS, upon which an exemption is based should be noted in the contract file. If an exemption is based on § 76-16(b)(15), the contract must meet the following conditions:

- (1) It involves the delivery of completed work or product by or during a specific time;
- (2) There is no employee-employer relationship; and
- (3) The authorized funding for the service is from other than the "A" or personal services cost element.

**NOTE:** Not all attached agencies have received a delegation under § 76-16(b)(15). If in doubt, attached agencies should check with the Director of DHRD prior to certifying an exemption under § 76-16(b)(15). Authority to certify exemptions under §§ 76-16(b)(2), and 76-16(b)(12), HRS, has not been delegated; only the Director of DHRD may certify §§ 76-16(b)(2), and 76-16(b)(12) exemptions.

**2. By the Director of DHRD, State of Hawaii.**

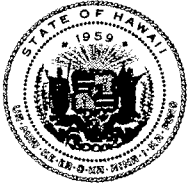
I certify that the services to be provided under this Contract, and the person(s) providing the services under this Contract are exempt from the civil service, pursuant to § 76-16, HRS.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title, if designee of the Director of DHRD)



**STATE OF HAWAII**  
**SPECIAL CONDITIONS**

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period

not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.



- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.
- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of

supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
  - (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
  - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.

- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.
- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:

- (A) Changes in the work within the scope of the Contract; and
  - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
- d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.
28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.



35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or
  - (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or

- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

## **APPENDIX A**

### **CHAPTER 87A**

**CHAPTER 87A**  
**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**

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Section

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### **Cross References**

Hawaii health authority, see chapter 322H.

### **Case Notes**

This chapter's use of general trust language does not impose upon the trustees all of the common law fiduciary duties; although this chapter does not use "discretion" in requiring the board to decide upon the structure of the health benefits plan, the legislature clearly intended that the board have broad discretion in its design; where trustees expressed concern regarding the impact a change to a three- or four-tier structure would have on the collective bargaining process, and also determined that the two-tiered structure would have a negative impact on the smallest percentage of plan participants, trustees did not abuse their discretion. 115 H. 126, 165 P.3d 1027.

## **PART I. GENERAL PROVISIONS**

**§87A-1 Definitions.** As used in this chapter:

"Board" means the board of trustees of the Hawaii employer-union health benefits trust fund described in section 87A-5.

"Carrier" means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of, health benefits or long-term care benefits under group insurance contracts.

"Contribution" means money payments made to the fund by the State, the counties, an employee-beneficiary, or a qualified-beneficiary.

"County" means the counties of Hawaii, Honolulu, Kauai, and Maui, including their respective boards of water supply and other quasi-independent boards, commissions, and agencies.

"Dependent-beneficiary" means an employee-beneficiary's:

- (1) Spouse;
- (2) Unmarried child deemed eligible by the board, including a legally adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary; and
- (3) Unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity, which existed prior to the unmarried child's reaching the age of nineteen years.

"Employee" means an employee or officer of the State, county, or legislature,

(1) Including:

- (A) An elective officer;
- (B) A per diem employee;
- (C) An officer or employee under an authorized leave of absence;
- (D) An employee of the Hawaii national guard although paid from federal funds;
- (E) A retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (F) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and
- (G) A person employed by contract for a period not exceeding one year, where the director of human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures,

(2) But excluding:

- (A) A designated beneficiary of a retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (B) Except as allowed under paragraph (1)(G), a person employed temporarily on a fee or contract basis; and
- (C) A part-time, temporary, and seasonal or casual employee.

"Employee-beneficiary" means:

- (1) An employee;

- (2) The beneficiary of an employee who is killed in the performance of the employee's duty;
- (3) An employee who retired prior to 1961;
- (4) The beneficiary of a retired member of the employees' retirement system; a county pension system; or a police, firefighters, or bandsmen pension system of the State or a county, upon the death of the retired member;
- (5) The surviving child of a deceased retired employee, if the child is unmarried and under the age of nineteen; or
- (6) The surviving spouse of a deceased retired employee, if the surviving spouse does not subsequently remarry; provided that the employee, the employee's beneficiary, or the beneficiary of the deceased retired employee is deemed eligible by the board to participate in a health benefits plan or long-term care benefits plan under this chapter.

"Fund" means the Hawaii employer-union health benefits trust fund established in section 87A-30.

"Health benefits plan" means:

- (1) A group insurance contract or service agreement that may include medical, hospital, surgical, prescribed drugs, vision, and dental services, in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of the services as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Long-term care benefits plan" means:

- (1) A group insurance contract or service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of long-term care benefits as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Part-time, temporary, and seasonal or casual employee" means a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position.

"Periodic charge" means the periodic payment by the board to a carrier for any health benefits plan or long-term care benefits plan.

"Qualified-beneficiary" means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours,



including the spouse, divorced spouse, parents, grandparents, in-law parents, and in-law grandparents of an employee or retiree; provided that the beneficiary was enrolled in the plan before the employee or former employee became ineligible for benefits.

"State agency" includes the office of Hawaiian affairs.

"Trustee" means a trustee of the board of trustees of the Hawaii employer-union health benefits trust fund, as described in section 87A-5. [L 2001, c 88, pt of §1; am L 2003, c 152, §1]

## **PART II. BOARD OF TRUSTEES**

**§87A-5 Composition of board.** *[See explanatory note below.]* The board of trustees of the employer-union health benefits trust fund shall consist of ten trustees appointed by the governor in accordance with the following procedure:

(1) Five trustees, one of whom shall represent retirees, to represent employee-beneficiaries and to be selected as follows:

(A) Three trustees shall be appointed from a list of two nominees per trustee selected by each of the three exclusive representative organizations that have the largest number of employee-beneficiaries;

(B) One trustee shall be appointed from a list of two nominees selected by mutual agreement of the remaining exclusive employee representative organizations; and

(C) One trustee representing retirees shall be appointed from a list of two nominees selected by mutual agreement of all eligible exclusive representatives; and

(2) Five trustees to represent public employers.

Section 26-34 shall not apply to board member selection and terms. Notwithstanding any other provision of this section, no exclusive representative of a bargaining unit that sponsors or participates in a voluntary employee beneficiary association shall be eligible to select nominees or to be represented by a trustee on the board.

As used in this section, the term "exclusive representative" shall have the same meaning as in section 89-2. [L 2001, c 88, pt of §1; am L 2005, c 250, §1]

### **Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**§87A-6 Term of a trustee; vacancy.** *[See explanatory note below.]* The term of office of each trustee shall be four years; provided that a trustee may be reappointed for one additional consecutive four-year term.

A vacancy on the board shall be filled in the same manner as the trustee who vacated that position was nominated or appointed; provided that the criteria used for nominating or appointing the successor shall be the same criteria used for nominating or appointing the person's predecessor; provided further that vacancies on the board for each trustee position representing retirees and employee-beneficiaries appointed under section 87A-5(1)(A) and (B) shall be filled by appointment of the governor as follows:

- (1) If a vacancy occurs in one of the trustee positions described in section 87A-5(1)(A), then the vacancy shall be appointed from a list of two nominees submitted by the exclusive employee representative from among the three largest exclusive employee representatives that does not have a trustee among the three trustee positions;
- (2) If a vacancy occurs in a trustee position described in section 87A-5(1)(B), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of the exclusive employee representatives described in section 87A-5(1)(B); and
- (3) If a vacancy occurs in the retiree position described in section 87A-5(1)(C), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of all eligible exclusive employee representatives.

If by the end of a trustee's term the trustee is not reappointed or the trustee's successor is not appointed, the trustee shall serve until the trustee's successor is appointed. [L 2001, c 88, pt of §1; am L 2005, c 250, §2]

#### **Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to

return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**[\$87A-7] Chair, vice-chair, and secretary-treasurer.** The trustees shall elect from among the members a chair, a vice-chair, and a secretary-treasurer. [L 2001, c 88, pt of \$1]

**[\$87A-8] Compensation and expenses.** Each trustee shall serve without compensation, but the trustees may be reimbursed from the fund for any reasonable expenses incurred in carrying out the purposes of the fund. [L 2001, c 88, pt of \$1]

**[\$87A-9] Legal adviser.** The attorney general shall serve as legal adviser to the board and shall provide legal representation for the Hawaii employer-union health benefits trust fund. [L 2001, c 88, pt of \$1]

**[\$87A-10] Meetings; notice.** Meetings may be scheduled, and notice of meetings shall be provided as follows:

- (1) The chairperson may call a meeting of the board at any time by giving at least six calendar days' written notice of the time and place of the meeting to all trustees; and
- (2) A majority of the trustees may call a meeting of the board by giving at least ten calendar days' written notice of the time and place to all other trustees. [L 2001, c 88, pt of \$1]

**[\$87A-11] Quorum; board actions; voting.** (a) Six trustees, three of whom represent the public employer and three of whom represent employee-beneficiaries, shall constitute a quorum for the transaction of business.

(b) Trustees representing the public employers shall collectively have one vote. Trustees representing the employee-beneficiaries shall collectively have one vote.

For any vote of the trustees representing the public employers to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the public employers shall be deemed to have abstained from voting.

For any vote of the trustees representing the employee-beneficiaries to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the

trustees representing the employee-beneficiaries shall be deemed to have abstained from voting.

An abstention shall not be counted as either a vote in favor or against a matter before the board.

(c) Any action taken by the board shall be by the concurrence of at least two votes. In the event of a tie vote on any motion, the motion shall fail. Upon the concurrence of six trustees, the board shall participate in dispute resolution. [L 2001, c 88, pt of §1]

**[§87A-12] Records and minutes.** The board shall keep records and minutes of all meetings of the board. [L 2001, c 88, pt of §1]

### **PART III. BOARD POWERS AND DUTIES**

**[§87A-15] Administration of the fund.** The board shall administer and carry out the purpose of the fund. Health and other benefit plans shall be provided at a cost affordable to both the public employers and the public employees. [L 2001, c 88, pt of §1]

**[§87A-16] Health benefits plan; carriers.** (a) The board shall establish the health benefits plan or plans, which shall be exempt from the minimum group requirements of chapter 431.

(b) The board may contract for health benefits plans or provide health benefits through a noninsured schedule of benefits. [L 2001, c 88, pt of §1]

**[§87A-17] Group life insurance benefits or group life insurance program.** The board may provide benefits under a group life insurance benefits program or group life insurance program to employees. [L 2001, c 88, pt of §1]

**§87A-18 Long-term care benefits plan; carrier or third-party administrator.** (a) The board may establish a long-term care benefits plan or plans for employee-beneficiaries; the spouses, parents, grandparents, in-law parents, and in-law grandparents of employee-beneficiaries; and qualified-beneficiaries. The plan or plans shall be at no cost to employers and shall comply with article 10H of chapter 431.

(b) Notwithstanding any other law to the contrary, long-term care benefits shall be available only to:

- (1) Employee-beneficiaries and their spouses, parents, and grandparents;

(2) Employee-beneficiary in-law parents and grandparents;  
and  
(3) Qualified-beneficiaries who enroll between the ages of  
twenty and eighty-five,  
who comply with the plan's age, enrollment, medical  
underwriting, and contribution requirements.

(c) The board may contract with a carrier to provide fully  
insured benefits or with a third-party administrator to  
administer self-insured benefits. [L 2001, c 88, pt of §1; am L  
2004, c 216, §14]

**[\$87A-19] Plans for part-time, temporary, and seasonal or casual employees.** (a) The board may offer medical, hospital, or surgical benefits plans to part-time, temporary, and seasonal or casual employees at no cost to the employers. The board may determine eligibility for part-time, temporary, and seasonal or casual employees by rules exempt from chapter 91 as provided in section 87A-26.

(b) The board shall establish the medical, hospital, or surgical benefits plan or plans, which shall be exempt from the minimum group requirements of article 10A of chapter 431. The medical, hospital, or surgical benefits plan or plans shall provide, pay for, arrange for, or reimburse the cost of medical, hospital, or surgical services, and may include prescribed hospital in-patient and out-patient service and medical benefits.

(c) The board may contract for the medical, hospital, or surgical benefits plan or plans. Each part-time, temporary, and seasonal or casual employee enrolled for medical, hospital, or surgical benefits shall pay monthly contributions directly to the board's designated carriers. The monthly contributions may include the carrier's administrative costs. [L 2001, c 88, pt of §1]

**§87A-20 REPEALED.** L 2004, c 216, §45.

**[\$87A-21] Eligibility.** (a) The board shall establish eligibility criteria to determine who can qualify as an employee-beneficiary, dependent-beneficiary, or qualified-beneficiary, consistent with the provisions of this chapter.

(b) A retired member of the employees' retirement system; a county pension system; or a police, firefighters, and bandsmen pension system of the State or county, shall be eligible to qualify as an employee-beneficiary:

- (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and

- (2) Without regard to the date of the retired member's retirement.
- (c) A dependent of a retired member shall be eligible to qualify as an employee-beneficiary or dependent-beneficiary:
  - (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
  - (2) Without regard to the date of the retired member's retirement. [L 2001, c 88, pt of §1]

**[\$87A-22] Benefits plan information and enrollment.** (a) The board shall make information summarizing approved benefits plans available to each employee-beneficiary. The information shall, to the extent reasonably possible, be distributed to each employee-beneficiary at the same time and in the same manner.

(b) The board shall establish conditions and procedures for benefits plan enrollment. [L 2001, c 88, pt of §1]

**§87A-23 Health benefits plan supplemental to medicare.** The board shall establish a health benefits plan, which takes into account benefits available to an employee-beneficiary and spouse under medicare, subject to the following conditions:

- (1) There shall be no duplication of benefits payable under medicare. The plan under this section, which shall be secondary to medicare, when combined with medicare and any other plan to which the health benefits plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall provide benefits that approximate those provided to a similarly situated beneficiary not eligible for medicare;
- (2) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a contribution equal to an amount not less than the medicare part B premium, for each of the following who are enrolled in the medicare part B medical insurance plan: (A) an employee-beneficiary who is a retired employee, (B) an employee-beneficiary's spouse while the employee-beneficiary is living, and (C) an employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary. For purposes of this section, a "retired employee" means retired members of the employees' retirement system; county pension system; or a police, firefighters, or bandsmen pension system of the State or a county as set forth in chapter 88.

If the amount reimbursed by the fund under this section is less than the actual cost of the medicare part B medical insurance plan due to an increase in the medicare part B medical insurance plan rate, the fund shall reimburse each employee-beneficiary and employee-beneficiary's spouse for the cost increase within thirty days of the rate change. Each employee-beneficiary and employee-beneficiary's spouse who becomes entitled to reimbursement from the fund for medicare part B premiums after July 1, 2006, shall designate a financial institution account into which the fund shall be authorized to deposit reimbursements. This method of payment may be waived by the fund if another method is determined to be more appropriate;

- (3) The benefits available under this plan, when combined with benefits available under medicare or any other coverage or plan to which this plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall approximate the benefits that would be provided to a similarly situated employee-beneficiary not eligible for medicare;
- (4) All employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the medicare part B medical insurance plan shall enroll in that plan as a condition of receiving contributions and participating in benefits plans under this chapter. This paragraph shall apply to retired employees, their spouses, and the surviving spouses of deceased retirees and employees killed in the performance of duty; and
- (5) The board shall determine which of the employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the medicare part B medical insurance plan, may participate in the plans offered by the fund. [L 2001, c 88, pt of §1; am L 2003, c 111, §1; am L 2006, c 39, §1]

**§87A-24 Other powers.** In addition to the power to administer the fund, the board may:

- (1) Collect, receive, deposit, and withdraw money on behalf of the fund;
- (2) Invest moneys in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7);
- (3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as

well as the proceeds of those investments and any money belonging to the fund;

- (4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator and staff shall be exempt from chapter 76 and shall serve under and at the pleasure of the board;
- (5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;
- (6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;
- (7) Retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;
- (8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and
- (9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this chapter. [L 2001, c 88, pt of §1; am L 2004, c 216, §15]

**[§87A-25] Other duties.** The board shall:

- (1) Authorize charges and payments from the fund only upon vouchers countersigned by the chairperson and any other person designated by the board;
- (2) Maintain accurate records and accounts of all financial transactions of the fund that shall be audited annually and summarized in an annual report to the governor and legislature;
- (3) Maintain suitable and adequate records and provide information requested by State and county employers as necessary to carry out the purpose of the fund;
- (4) Procure fiduciary liability insurance and error and omissions coverage for all trustees; and
- (5) Procure a fidelity bond of a reasonable amount for the chairperson and any other person authorized to handle fund moneys. [L 2001, c 88, pt of §1]

**[§87A-26] Rules; policies, standards, and procedures.** (a) The board may adopt rules for the purposes of this chapter. Rules shall be adopted without regard to chapter 91. Rule-making procedures shall be adopted by the board and shall minimally provide for:



- (1) Consultation with employers and affected employee organizations with regard to proposed rules;
  - (2) Adoption of rules at open meetings that permit the attendance of any interested persons;
  - (3) Approval of rules by the governor; and
  - (4) Filing of rules with the lieutenant governor.
- (b) The board may also issue policies, standards, and procedures consistent with its rules.
- (c) The board may adopt rules, without regard to chapter 91, governing dispute resolution procedures in the event of impasse in decision-making; provided that the rules shall be adopted with the concurrence of six trustees.

#### **PART IV. TRUST FUND**

**§87A-30 Hawaii employer-union health benefits trust fund; establishment.** There is established outside the state treasury, a trust fund to be known as the "Hawaii Employer-Union Health Benefits Trust Fund". The fund shall consist of contributions, interest, income, dividends, refunds, rate credits, and other returns. It is hereby declared that any and all sums contributed or paid from any source to the fund created by this part, and all assets of the fund including any and all interest and earnings on the same, are and shall be held in trust by the board for the exclusive use and benefit of the employee-beneficiaries and dependent-beneficiaries and shall not be subject to appropriation for any other purpose whatsoever. The fund shall be under the control of the board and placed under the department of budget and finance for administrative purposes. [L 2001, c 88, pt of §1; am L 2006, c 57, §3]

**§87A-31 Trust fund; purpose.** (a) The fund shall be used to provide employee-beneficiaries and dependent-beneficiaries with health and other benefit plans, and to pay administrative and other expenses of the fund. All assets of the fund are and shall be dedicated to providing health and other benefits plans to the employee-beneficiaries and dependent-beneficiaries in accordance with the terms of those plans and to pay administrative and other expenses of the fund, and shall be used for no other purposes except for those set forth in this section.

(b) The fund, including any earnings on investments, and rate credits or reimbursements from any carrier or self-insured plan and any earning or interest derived therefrom, may be used to stabilize health and other benefit plan rates; provided that the approval of the governor and the legislature shall be

necessary to fund administrative and other expenses necessary to effectuate these purposes.

(c) The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections 87A-32 and 87A-37.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under Title 26 United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(e) At the discretion of the board, some or all of the fund may be used as a reserve against or to pay the fund's future costs of providing health and other benefits plans established under sections 87A-23 and 87A-37 and any other benefits plans the board establishes for retired employees and their beneficiaries. The board may create separate funds within the fund for this purpose. Each separate fund shall be subject to all of the provisions of this chapter. [L 2001, c 88, pt of §1; am L 2006, c 57, §4]

#### **Note**

Part II of chapter 78 referred to in text is repealed.

#### **[§87A-31.5] Employer contributions irrevocable.**

Notwithstanding any law to the contrary, all of the monthly contributions that the State and counties make to the fund under sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, and all other contributions that the State and counties may make to the fund, shall be irrevocable; provided that this shall not preclude the fund from returning contributions or payments made by the State or any county under a mistake of fact within one year after the payment of the contributions or payments. [L 2006, c 57, §2]

#### **[§87A-32] State and county contributions; active employees.**

(a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreements, whichever is appropriate, for each of their respective employee-beneficiaries and employee-beneficiaries with dependent-beneficiaries, which shall be used toward the payment of costs of a health benefits plan; provided that:

- (1) The monthly contribution shall be a specified dollar amount;
  - (2) The monthly contribution shall not exceed the actual cost of a health benefits plan;
  - (3) If both husband and wife are employee-beneficiaries, the total contribution by the State or the county shall not exceed the monthly contribution for a family plan; and
  - (4) If the State or any of the counties establish cafeteria plans in accordance with Title 26, United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78, the monthly contribution for those employee-beneficiaries who participate in a cafeteria plan shall be made through the cafeteria plan, and the payments made by the State or counties shall include their respective contributions to the fund and their employee-beneficiary's share of the cost of the employee-beneficiary's health benefits plan.
- (b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is applicable, for each of their respective employees, to be used toward the payment of group life insurance benefits for each employee. [L 2001, c 88, pt of §1]

#### **Note**

Part II of chapter 78 referred to in text is repealed.

#### **§87A-33 State and county contributions; retired employees.**

- (a) Notwithstanding any law to the contrary, this section shall apply to state and county contributions to the fund for:
- (1) The dependent-beneficiary of an employee who is killed in the performance of duty;
  - (2) A dependent-beneficiary, upon the death of the employee-beneficiary, except as provided in section 87A-36;
  - (3) An employee-beneficiary who retired after June 30, 1984, due to a disability falling within sections 88-79 and 88-285;
  - (4) An employee-beneficiary who retired before July 1, 1984;
  - (5) An employee-beneficiary who:

- (A) Was hired before July 1, 1996;
  - (B) Retired after June 30, 1984; and
  - (C) Who has ten years or more of credited service, excluding sick leave;
- (6) An employee-beneficiary who:
- (A) Was hired after June 30, 1996; and
  - (B) Retired with twenty-five or more years of credited service, excluding sick leave, except as provided in section 87A-36; and
- (7) Employees who retired prior to 1961 and their dependent-beneficiaries.
- (b) Effective July 1, 2003, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:
- (1) \$218 for each employee-beneficiary enrolled in supplemental medicare self plans;
  - (2) \$671 for each employee-beneficiary enrolled in supplemental medicare family plans;
  - (3) \$342 for each employee-beneficiary enrolled in non-medicare self plans; and
  - (4) \$928 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefits plan or plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(c) Effective July 1, 2004, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$254 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$787 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$412 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$1,089 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefit plan or plans and shall not be required to cover increased benefits above those initially contracted for by the fund for plan year 2004-2005.

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(d) The base composite monthly contribution shall be adjusted annually, beginning July 1, 2005. The adjusted base composite monthly contribution for each new plan year (July 1 until June 30) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect at the beginning of the previous plan year.

For the plan year beginning July 1, 2005, the adjusted base monthly contribution shall be computed using the actual contracted premium rate as of July 1, 2004, for medicare and non-medicare, self and family health benefits plans with the highest actual contracted premium rate as of July 1, 2004.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress.

(e) If the board adopts a rate structure that provides for other than self and family rates for the health benefit plans, the base monthly contribution for the rate structure adopted by the board shall be adjusted to provide the equivalent underwriting cost as the base monthly contribution that is provided for in this section. [L 2001, c 88, pt of §1; am L 2003, c 111, §2; am L 2007, c 26, §1]

**[§87A-33.5] State and county contribution; reimbursement for retired employees.** Effective July 1, 2007, an employee-beneficiary who retires and relocates outside of the State shall be reimbursed for the premiums paid by the employee-beneficiary for a personal health insurance policy; provided that the board shall determine which employee-beneficiaries and what types of personal health insurance policies shall be eligible for reimbursement and may set other conditions that shall be met for the employee-beneficiary to receive the reimbursements provided under this section.

The reimbursement shall be the lesser of:

- (1) The actual cost of the personal health insurance policy; or
- (2) The amount of the state or county contribution for the most comparable health benefits plan.

Reimbursements shall be paid by the fund on a quarterly basis upon the presentation of documentation that the premiums for the personal health insurance policy have been paid by the employee-beneficiary. This section shall apply to all employee-beneficiaries who retire and relocate outside of the State, regardless of their date of retirement. [L 2006, c 167, §1]

**[§87A-34] State and county contributions; retired employees with fewer than ten years of service.** (a) This section shall apply to state and county contributions to the fund for employees specified in paragraph (1)(E) of the definition of "employee" in section 87A-1 who:

- (1) Were hired on or before June 30, 1996; and
- (2) Retired after June 30, 1984, with fewer than ten years of credited service, excluding sick leave.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to one-half of the base monthly contribution set forth under section 87A-33(b) for retired employees enrolled in medicare or non-medicare health benefits plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for supplemental medicare family or non-medicare family plan, as appropriate. [L 2001, c 88, pt of §1]

**§87A-35 State and county contributions; employees hired after June 30, 1996, but before July 1, 2001, and retired with fewer than twenty-five years of service.** (a) This section shall apply to state and county contributions to the fund for employees who were hired after June 30, 1996, but before July 1, 2001, and who retire with fewer than twenty-five years of credited service, excluding sick leave; provided that this section shall not apply to the following employees, for whom state and county contributions shall be made as provided by section 87A-33:

- (1) An employee hired prior to July 1, 1996, who transfers employment after June 30, 1996, and who cumulatively accrues at least ten years of credited service; and

- (2) An employee hired prior to July 1, 1996, who has at least ten years of credited service prior to a break in service.

For the purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"Transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after June 30, 1996, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees enrolled in medicare or non-medicare health benefit plans with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base monthly contribution set forth under section 87A-33(b); and

- (2) For retired employees enrolled in medicare or non-medicare health benefit plans with at least fifteen but fewer than twenty-five years of service, a monthly contribution of seventy-five per cent of the base monthly contribution set forth under section 87A-33(b).

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate. [L 2001, c 88, pt of §1; am L 2004, c 184, §1]

#### **Note**

L 2004, c 184, §3 provides:

"SECTION 3. The board of trustees of the employer-union health benefits trust fund shall establish a process by which public employees affected by this Act shall be notified of the retirement health benefits options provided under this Act."

**§87A-36 State and county contributions; employees hired after June 30, 2001, and retired.** (a) This section shall apply to state and county contributions to the fund for employees hired

after June 30, 2001, and who retired, except that this section shall not apply to the following employees, for whom state and county contributions shall be made as provided by section 87A-35:

- (1) An employee hired after June 30, 1996, and prior to July 1, 2001, who transfers employment after June 30, 2001, and who cumulatively accrues at least ten years of credited service; and
- (2) An employee hired after June 30, 1996, and prior to July 1, 2001, who has at least ten years of credited service prior to a break in service.

For purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"Transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after July 1, 2001, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees based on the self plan with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (2) For retired employees based on the self plan with at least fifteen but fewer than twenty-five years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (3) For retired employees based on the self plan with twenty-five or more years of service, a monthly contribution equal to one-hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b); and
- (4) One-half of the monthly contributions for the employee-beneficiary or employee-beneficiary with dependent-beneficiaries upon the death of the employee, as defined in paragraph (1)(E) of the definition of "employee" in section 87A-1.



If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for two supplemental medicare self or non-medicare self plans, as appropriate. [L 2001, c 88, pt of §1; am L 2004, c 184, §2]

#### **Note**

L 2004, c 184, §3 provides:

"SECTION 3. The board of trustees of the employer-union health benefits trust fund shall establish a process by which public employees affected by this Act shall be notified of the retirement health benefits options provided under this Act."

**[\$87A-37] Group life insurance benefits plans for retired employees; contributions.** (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a base monthly contribution as set forth in subsection (b) for each retired employee enrolled in the fund's group life insurance benefits plan under section 87A-34, 87A-35, and 87A-36.

(b) Effective July 1, 2003, there is established a base monthly contribution of \$4.16 for each retired employee enrolled in a group life insurance plan; provided that the monthly contribution shall not exceed the actual cost of the group life insurance benefits plan. The base composite monthly contribution shall be adjusted annually beginning July 1, 2004. The adjusted base composite monthly contribution for each new plan year shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years. The percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect through the end of the previous plan year.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress. [L 2001, c 88, pt of §1]

**[\$87A-38] State and county contributions not considered wages or salary.** Contributions made by the State or the counties

under this part shall not be considered wages or salary of an employee-beneficiary. No employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund. [L 2001, c 88, pt of §1]

**[\$87A-39] Reimbursement for state contributions.** (a) All state agencies having control of funds other than the general fund shall reimburse the State for contributions made by the State pursuant to sections 87A-32, 87A-33, 87A-34 87A-35, 87A-36, and 87A-37 on account of agency employees whose compensation is paid in whole or part from funds other than the general fund.

(b) All state and county agencies receiving federal funds, which may be expended for the purpose of replacing the contributions payable by the State to the fund, shall set aside a portion of the federal funds sufficient to reimburse the State for contributions made by the State pursuant to sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, on account of the employees in the agencies whose compensation is paid in whole or part from federal funds. [L 2001, c 88, pt of §1]

**[\$87A-40] Employee-beneficiary contributions; health benefit plans.** (a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the contribution made by the State or county for the employee-beneficiary to the fund. Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under Title 26 United States Code section 125, Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(b) During the period the health benefits plan selected by an employee-beneficiary is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution:

- (1) In the case of an employee-beneficiary who normally receives the employee-beneficiary's compensation from the comptroller or employees' retirement system, directly to the fund by the first day of each month;  
or

(2) In the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the first day of each month.

(c) Notwithstanding subsection (a), an employee-beneficiary's monthly contribution to the fund shall include the amount that would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan. [L 2001, c 88, pt of \$1]

#### **Note**

Part II of chapter 78 referred to in text is repealed.

**[§87A-41] Employee-beneficiary or qualified-beneficiary contributions; long-term care benefits plan.** (a) During the period the long-term care benefits plan is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's monthly contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution directly to the board's designated carrier or third-party administrator as specified by the board.

(b) Qualified-beneficiaries shall pay monthly contributions directly to the board's designated carrier or third-party administrator as specified by the board. [L 2001, c 88, pt of \$1]

## **APPENDIX B**

### **HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND ADMINISTRATIVE RULES**

# **HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**

## **ADMINISTRATIVE RULES**

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## **1.00 GENERAL PROVISIONS**

- 1.01 Purpose
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- 1.12 Authority of the Board to Waive Rule Provisions
- 1.13 Responsibilities of Employee-Beneficiaries and Public Employers; Enforcement Actions of the Fund

### **1.01 Purpose**

Chapter 87A of the Hawaii Revised Statutes establishes a health trust fund known as the Hawaii Employer-Union Health Benefits Trust Fund. The Fund is to be used to provide eligible state and county employees, retirees, and their dependents with health and other benefit plans at a cost affordable to both the public employers and the public employees. The board is to administer and carry out the purposes of the Fund. These rules are adopted by the board pursuant to Section 87A-26 of the Hawaii Revised Statutes to implement the administration and purposes of the Fund.

### **1.02 Definitions**

As used in these rules, unless otherwise indicated by the context, the following terms shall have the following meanings:

“Administrator” means the administrator of the Fund appointed by the board or the duly authorized representative of the administrator.

“Benefit plan” means a health benefit plan, a group life insurance plan that is subject to Section 79 of the Internal Revenue Code, or any other type of benefit plan except for a long-term care benefit plan.

“Board” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Carrier” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Child” means an employee’s, or where applicable, a domestic partner’s legally adopted child, a child placed for adoption, stepchild, foster child, or recognized natural child. Except for a recognized natural child of an employee or as otherwise provided by these rules, a child must live with the employee-beneficiary. A child has been placed for adoption when an adoptive parent has assumed custody of and the obligation to support a child in anticipation of adopting the child. A foster child is a child:

- (1) who lives with an employee in a regular parent-child relationship; and
- (2) for whom the employee has become the child’s guardian or has been awarded legal and physical custody of the child pursuant to a valid court order.

“Contributions” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“County” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Dependent-beneficiary” shall mean the persons described in Rule 3.01 of these rules as being eligible for coverage as dependent-beneficiaries in the health benefit plans offered or sponsored by the Fund.

“Dissolution of domestic partnership” shall occur when: (1) the employee-beneficiary no longer meets the requirements to qualify as a “domestic partner”; (2) one of the partners to the domestic partnership expressly informs the other of the end of their domestic partnership; (3) one of the partners to the domestic partnership takes actions inconsistent with the continued existence of the domestic partnership; or (4) the domestic partnership is otherwise terminated or dissolved.

“Domestic partner” shall mean a person in a spouse-like relationship with an employee-beneficiary who meets the following requirements: (1) the employee-beneficiary and the domestic partner intend to remain in a domestic partnership with each other indefinitely; (2) the employee-



beneficiary and the domestic partner have a common residence and intend to reside together indefinitely; (3) the employee-beneficiary and the domestic partner are and agree to be jointly and severally responsible for each other's basic living expenses incurred in the domestic partnership such as food, shelter and medical care; (4) neither the employee-beneficiary nor the domestic partner are married or a member of another domestic partnership; (5) the employee-beneficiary and the domestic partner are not related by blood in a way that would prevent them from being married to each other in the State of Hawaii; (6) the employee-beneficiary and the domestic partner are both at least 18 years of age and mentally competent to contract; (7) the consent of the employee-beneficiary or the domestic partner to the domestic partnership has not been obtained by force, duress or fraud; and (8) the employee-beneficiary and the domestic partner sign and file with the Fund a declaration of domestic partnership in such form as the board shall from time to time prescribe.

"Employee" shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

"Employee-beneficiary" shall mean the persons described in Rule 3.01 of these rules as being eligible to enroll as employee-beneficiaries in the health benefit plans offered or sponsored by the Fund.

"Employer" or "public employer" shall have the meaning as set forth in Section 89-2 of the Hawaii Revised Statutes.

"Full-time student" means a student who is enrolled in an accredited school, college, or university for not less than the minimum number of credit hours required by such educational institution to have full-time student status.

"Fund" shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

"Fund benefit plan" means a benefit plan offered or sponsored by the Fund.

"Health benefit plan" shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Long-term care benefit plan” shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Non-Fund benefit plan” means a benefit plan offered or sponsored by a private employer or an entity other than the Fund.

“Part-time, temporary, and seasonal or casual employee” shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Periodic change” shall have the same meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Qualified beneficiary” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Qualified medical child support order” means any judgment, decree, or order issued by a court of competent jurisdiction that requires the provision of health benefits coverage to a child of a non-custodial parent.

“Retired member” or “retired employee” means a former employee, officer, appointed or elected official of the State or counties who is currently receiving a retirement or pension allowance from a State or county retirement system or an employee who retired prior to 1961.

“State or county retirement system” means the employees’ retirement system, the county pension system, or the police, fire, or bandsmen pension system of the State or any county.

“Trustee” shall have the meaning as set forth in Section 87A-1 of the Hawaii Revised Statutes.

“Trustee group” means the group composed of the five trustees representing public employers or the group composed of the five trustees representing employee-beneficiaries as described in Section 87A-5 of the Hawaii Revised Statutes.

### **1.03 Public Information**

To the extent permitted by applicable federal or state law, the public records of the Fund shall be available for inspection at the Fund's office during regular business hours. All requests for inspection of public records shall be in writing and addressed to the administrator or any other person designated by the board to receive such requests. Copies of public records shall be provided upon the payment of the reasonable costs of reproduction and any fees for searching, reviewing and segregating such records. The board shall establish such costs and fees in accordance with applicable federal and state law.

Protected health information about employee-beneficiaries and dependent-beneficiaries are not public records. Employee-beneficiaries, dependent-beneficiaries, and others may have access to such information only in conformance with the Health Insurance Portability and Accountability Act of 1996 and the rules passed under that Act ("HIPAA"), and the Fund's HIPAA Privacy Policies and Procedures.

### **1.04 Computation of Time**

Whenever a period of time is stated in these rules as a number of days from or after an event: (a) the period shall be computed in calendar days; (b) the day of the event shall not be included in the calculation; and (c) the last day of the period shall be included in the calculation.

### **1.05 Officers of the Board**

- (a) The board shall elect a chairperson, vice-chairperson, and secretary-treasurer.
- (b) Both the chairperson and vice-chairperson shall be elected from the same trustee group. The secretary-treasurer shall be elected from the other trustee group.
- (c) Officer terms shall be for one year beginning July 1, 2002, and shall rotate between the trustee groups annually. The terms of all elected officers shall terminate on June 30 of each succeeding year and such officers shall vacate their offices at that time.

- (d) Except as otherwise provided by law or by rules or policies adopted by the board, the duties of the officers shall be as provided in the 10th Edition of *Robert's Rules of Order, Newly Revised*.
- (e) The chairperson or vice-chairperson and secretary-treasurer shall coordinate assignments to the administrator and other Fund staff, requests for information, and other matters concerning the administration and operation of the board.

#### **1.06 Committees of the Board**

- (a) Standing committees shall be established by the board to address critical issues in the major functional areas of the Fund:
  - (1) The Administrative Committee will have combined administrative and finance committee functions;
  - (2) The Benefits Committee will have benefits, communication, and appeals committee functions.
- (b) The board may establish other committees to address matters related to the operation or administration of the Fund or to investigate issues that impact the Fund.
- (c) Committees shall operate informally and shall make recommendations to the full board. Meetings of all standing committees will comply with Part I of Chapter 92 of the Hawaii Revised Statutes.
- (d) A minimum of four trustees (two trustees from each trustee group) shall be assigned to a committee. The assigned number of trustees may be larger for certain committees provided that an equal number of trustees are assigned from each trustee group.
- (e) Attendance of at least one trustee from each trustee group shall be necessary to convene a committee meeting.
- (f) Committees may select a chairperson and any other officers as deemed necessary by the board.
- (g) Committee chairpersons shall coordinate assignments to the administrator and other Fund staff for their respective committees.

- (h) Trustees in attendance shall agree within their working committees on recommendations made to the full board. When there is no agreement by the trustees in attendance, the committee shall present a summary of the disagreement(s) to the full board.

#### **1.07 Meetings of the Board**

- (a) To the extent permitted by applicable federal or state law, the meetings of the board shall be open to the public. Without limiting the foregoing, board meetings shall comply with Part I of Chapter 92 of the Hawaii Revised Statutes, including the provisions therein requiring: (1) written and electronic notice of board meetings at least six calendar days prior to each meeting; and (2) written minutes.
- (b) The board shall designate the administrator or some other member of the Fund's staff to be responsible for preparing agendas for future board meetings. Any trustee may place a question or subject on the agenda of a future board meeting by notifying the administrator or other designated staff person by 12:00 noon, seven days prior to the board meeting. All board meeting agendas shall be transmitted to the chairperson for review prior to public notice.
- (c) Unless otherwise required by the board or applicable law, the parliamentary procedure to be used by the board in the conduct of its meetings shall be in accordance with the 10th Edition of *Roberts Rules of Order, Newly Revised*.
- (d) Voting procedures for board meetings and the criteria for a quorum are established in Section 87A-11 of the Hawaii Revised Statutes. In addition, the following voting procedures shall apply:
  - (1) After a motion is made and seconded, the presiding officer shall read the motion and open the question to discussion and debate by the trustees. When ready to put the motion to a vote, the presiding officer shall call for the public employer and employee-beneficiary trustee votes to determine whether there are three votes from each trustee group in favor of the motion. If so, the motion shall be recorded as having been approved by one vote from the public employer trustees and one vote from the employee-beneficiary trustees.

- (2) For routine or procedural matters, the presiding officer may ask if there is any opposition to a motion after it has been made, and to the extent required, seconded and debated. If no opposition is voiced, the motion shall be recorded as having been unanimously approved by one vote by the public employer trustees and one vote from the employee-beneficiary trustees.
- (3) If the voting is not unanimous by each side, the names of the trustees who voted in favor of the motion, voted against the motion, or abstained from voting shall be recorded in the minutes.
- (4) In the event of a deadlock in a vote of the board on the same question or resolution at two successive meetings of the board, the board shall vote on whether or not to engage in dispute resolution. If six trustees of the board vote to engage in dispute resolution, the two trustee groups shall enter into mediation to attempt to resolve the question or resolution upon which the board has deadlocked.

The mediation shall be handled by a mediator appointed by the Federal Mediation and Conciliation Service. If the Federal Mediation and Conciliation Service fails or refuses to appoint a mediator within ten days of the date on which the six trustees voted to engage in dispute resolution, the mediation shall be handled by a mediator mutually agreeable to the two trustee groups. If the two trustee groups do not agree on a mediator within twenty days of the date on which the six trustees voted to engage in dispute resolution, either trustee group may petition the Administrative Judge of the First Circuit, Circuit Courts of the State of Hawaii, to appoint a mediator. Upon the appointment of a mediator, the two trustee groups shall in good faith enter into mediation on the question or resolution upon which the board has deadlocked. Nothing in this rule is meant to preclude the board from voting to engage in other forms of alternate dispute resolution to resolve a question or resolution upon which it has deadlocked.

- (5) Whenever any statute or other law requires a vote of a majority, two-thirds or other percentage or fraction of the trustees or members to which the board is entitled, the motion or other action shall be approved if it receives two votes in favor of the motion or

action as provided in subsection (d)(1), regardless of the total number of votes in favor of the motion or action.

For example, if a statute or other law requires a two-thirds vote of the members to which the board is entitled, the motion or other action will be approved if three trustees from each trustee group vote in favor of the motion or other action, even if the remaining four trustees vote against the motion or other action.

#### **1.08 Appearances Before the Board**

- (a) All persons shall comply with this rule when appearing before the board. Unless otherwise required by applicable federal or state law, the board shall have the discretion to prescribe additional standards and procedures for all appearances and proceedings before the board. The board may waive or suspend the provisions of this rule with respect to any particular appearance or proceeding before it.
- (b) Any person appearing before the board may appear in person, by an officer, partner or regular employee of the party, or be represented by an authorized representative. The board may at any time require any person transacting business with the board in a representative capacity to prove or authenticate the person's authority and qualification to act in such capacity.
- (c) The board shall afford all interested persons an opportunity to present oral testimony or submit data, views, or arguments, in writing, on any agenda item.
  - (1) Persons providing written testimony shall provide thirty copies of their testimony of which twenty copies shall be made available to the public. Twenty copies of materials provided to the board for or during a meeting that are determined to be disclosable shall be made available for distribution to the public.
  - (2) The board shall hear oral testimony on an agenda item after it has completed discussion of that item. At that time, the presiding officer shall invite members of the public to ask questions or provide comments on the agenda item prior to any action by the board. After the public has had an opportunity to provide input on

the agenda item, the board may discuss the agenda item further and act on the item or move on to the next agenda item.

- (3) A person may speak at a board meeting only when recognized to do so by the presiding officer. Comments are limited to three minutes per speaker. Time limitations may be adjusted at the discretion of the presiding officer or at the request of any three trustees. A person may not speak a second time on the same question unless authorized by the presiding officer to do so.
  - (4) The board may refuse to hear any testimony that is irrelevant, immaterial, or unduly repetitious and may from time to time impose additional conditions as are necessary or desirable for the orderly, efficient, and convenient presentation of oral testimony to the board. The board may request that the person providing oral testimony submit the testimony in writing to the board.
- (d) Nothing herein shall require the board to hear or receive any oral testimony or documentary evidence from a person on any matter which is the subject of another proceeding pending before the board.

#### **1.09 Delegation of Authority**

To the extent permitted by law, the board may delegate authority to act on its behalf in accordance with board policies and standards to a committee of the board, an administrator, a carrier, a third party administrator, or to such other persons and entities as it deems necessary or reasonable for the effective and efficient administration of the Fund and the provisions of Chapter 87A of the Hawaii Revised Statutes; provided, however, that nothing in this rule shall permit the board to delegate its power to adopt, amend or repeal any rules.

#### **1.10 State Ethics Code**

All trustees and employees of the Fund shall comply with Chapter 84 of the Hawaii Revised Statutes.

#### **1.11 Controlling Law**

To the extent that federal or state law governs any matter covered by these rules, the Fund and the board shall comply with and follow such federal or state law. To the extent that any matter is not completely governed by federal or state



law, the Fund and the board shall apply these rules to the extent reasonable and practicable.

#### **1.12 Authority of the Board to Waive Rule Provisions**

Subject to statutory requirements and limitations, the Board may waive an employee-beneficiary's compliance with any provision of the Fund's rules when the Board determines that: (a) good cause exists for such a waiver; (b) strict enforcement of such provision would impose a manifest injustice upon an employee-beneficiary who has substantially complied with the Fund's rules in good faith; and (c) such waiver does not involve any increase in the obligations or liabilities of the Fund beyond that which would have been involved if the employee-beneficiary had fully complied with the Fund's rules. Each waiver by the Board must be in writing and supported by documentation of the pertinent facts and grounds.

#### **1.13 Responsibilities of Employee-Beneficiaries and Public Employers; Enforcement Actions of the Fund**

- (a) Employee-beneficiaries are responsible for:
  - (1) Providing current and accurate personal information as per Rules 4.06 and 4.07;
  - (2) Paying the employee's premium contributions in the amount or amounts provided by statute, an applicable bargaining unit agreement, or by the applicable Fund benefit plan;
  - (3) Paying the employee's premium contributions at the times and in the manner designated by the board; and
  - (4) Complying with the Fund's rules.
- (b) Any public employer whose current or former employees participate in Fund benefit plans is responsible for:
  - (1) Providing information as requested by the Fund under section 87A-24(9) of the Hawaii Revised Statutes;
  - (2) Paying the employer's premium contributions in the amount or amounts provided by statute or an applicable bargaining unit

agreement and at the times and in the manner designated by the board;

- (3) Assisting the Fund in distributing information to and collecting information from the employee-beneficiaries; and
  - (4) Complying with the Fund's rules.
- (c) The Fund shall have the right and authority to file actions in any court, including but not limited to the courts of the State of Hawaii and the United States of America, to enforce the foregoing obligations and to collect premium contributions. Nothing in this rule is intended to limit or restrict the rights or remedies otherwise available to the Fund.

## **2.00 ADMINISTRATIVE PROCEDURES**

- 2.01 Adoption, Amendment or Repeal of Rules
- 2.02 Policies, Standards, and Procedures
- 2.03 Declaratory Rulings
- 2.04 Administrative Appeals
- 2.05 Emergency Appeals

### **2.01 Adoption, Amendment or Repeal of Rules**

- (a) The board may adopt, amend or repeal any rule of the Fund upon a motion of any trustee or upon the petition of an interested person or organization.
- (b) In the case of an interested person or organization, the petition shall be in writing and shall be submitted in duplicate to the board. The petition need not be in any particular form but shall contain:
  - (1) The petitioner's name, address, and telephone number;
  - (2) A statement of the nature of the petitioner's interest;
  - (3) A statement of the reasons for the proposed rule, amendment or repeal;
  - (4) A draft of the proposed rule, amendment or repeal; and
  - (5) The signature of the petitioner.

The board may reject any petition that does not contain the foregoing information.

- (c) The board shall determine whether to deny or proceed with a petition within ninety days. If the petition is denied, the board shall notify the interested person or organization in writing of the denial.
- (d) If the board decides to proceed with any proposed rule change, whether by a trustee or interested person or organization, it shall consult with public employers and affected employee organizations with regard to the proposed rule change as follows. First, it shall transmit the proposed rule change to the public employers, exclusive employee organizations, exclusive representatives, retiree organizations, and all other employee organizations registered with the board for consultation prior to adoption. Second, it shall provide the employers, representatives and organizations a

reasonable amount of time for review and comment on the proposed change prior to final action by the board.

- (e) After the consultation provided for in subsection (d), the proposed rule change shall be considered for adoption at an open meeting of the board that permits the attendance of interested persons.
- (f) All proposed rule changes shall be adopted by the board in accordance with the provisions of section 87A- 26 of the Hawaii Revised Statutes.
- (g) New rules, amendments or repeals of rules that are adopted by the board shall be submitted to the governor for approval and filed with the lieutenant governor's office.
- (h) Unless some other date is expressly selected by the board, a new rule, amendment of a rule, or repeal of a rule shall be effective the first day after the rule, amendment, or repeal is filed with the lieutenant governor's office.

## **2.02 Policies, Standards, and Procedures**

Policies, standards and procedures to be adopted amended or repealed may, at the discretion of the board, be transmitted to public employers and affected employee organizations for consultation purposes. Nothing herein shall require the board to consult with public employers or affected employee organizations concerning the board's adoption, amendment or repeal of policies, standards and procedures or to transmit any such policies, standards or procedures to public employers or affected employee organizations for consultation purposes.

## **2.03 Declaratory Rulings**

- (a) Any interested person may petition the board for a declaratory ruling as to the applicability of any statutory provision administered by the board or of any rule or order of the Fund.
- (b) Every petition shall be in writing and shall be submitted in duplicate to the board. The petition need not be in any particular form but shall contain the following:
  - (1) The petitioner's name, address, and telephone number;
  - (2) A designation of the specific statute, rule or order in question;

- (3) A statement of the nature of the petitioner's interest, including the reasons for the submittal of the petition;
- (4) A complete statement of the relevant and material facts;
- (5) A statement of the position or contentions of the petitioner; and
- (6) A full discussion of the reasons, including any legal authorities, in support of the petitioner's position or contention.

The board may reject any petition that does not contain the foregoing information.

- (c) Petitions to intervene and become a party to a declaratory ruling proceeding may be submitted in writing to the board. Such petitions shall contain the same information as required under subsection (b) and the grounds and reasons on which intervention is sought. The Board may deny intervention where the petition to intervene raises issues not reasonably pertinent to the issues already presented or the petition raises issues that would broaden the issues to be decided. If intervention is granted, the petitioner shall become a party to the proceeding to the degree permitted by the order granting intervention.
- (d) The board may dismiss any petition for a declaratory ruling for good cause. Without limiting the generality of good cause, the board may dismiss a petition if:
  - (1) The question raised is purely speculative or hypothetical;
  - (2) The petitioner's interest is not of the type or nature that would give the petitioner standing to maintain an action if the petitioner were to seek judicial relief;
  - (3) The issuance of a declaratory ruling may adversely affect the interests of the employer, the board, any of the trustees, the Fund, or any of the Fund's officers or employees in litigation which is pending or reasonably expected to arise in the future; or
  - (4) The matter is not within the jurisdiction of the board.
- (e) Subject to applicable federal and state law, the board at its discretion shall:
  - (1) Render a decision on the petition for a declaratory ruling without a hearing; or
  - (2) Hold a hearing and thereafter render its decision on the petition; or
  - (3) Refer the petition for consideration or hearing to the administrator, a special or standing committee of the board or any other person or

entity duly designated by the board. After considering the recommendation of the administrator, committee or designated person or entity, the board shall render its decision on the petition.

Where any question of law is involved, the board may seek the assistance of the state attorney general in reviewing the matter. The board may also seek the assistance of other government agencies when necessary or desirable.

Any petitioner who desires a hearing shall submit a written request for a hearing together with the petition for a declaratory ruling. The written request shall set forth in detail the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence and briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition and, to the extent that the request for a hearing is dependent upon factual assertions, shall submit affidavits or certificates establishing those facts.

- (f) The petition for a declaratory ruling shall either be rejected in accordance with subsection (d) or acted upon by issuance of an order within ninety days. Upon the disposition of the petition, the board shall promptly notify the petitioner.
- (g) Orders disposing of petitions for a declaratory ruling will have the same status as other agency orders. An order shall be applicable only to the fact situation alleged in the petition or as set forth in the order. An order shall not be applicable to different fact situations or where additional facts exist that were not considered in the order.

#### **2.04 Administrative Appeals**

- (a) A person aggrieved by one of the following decisions by the Fund may appeal to the board for relief from that decision:
  - (1) A determination that the person is not an employee-beneficiary, dependent-beneficiary or qualified beneficiary, or that the person is not eligible to enroll in or be covered by a benefit plan offered or sponsored by the Fund;

- (2) A determination that the person cannot make a change in enrollment, a change in coverage, or a change in plans;
  - (3) A cancellation or termination of the person's enrollment in or coverage by a benefit plan, including long term care, offered or sponsored by the Fund; or
  - (4) A refusal to reinstate the person's enrollment in or coverage by a benefit plan, including long term care, offered or sponsored by the Fund.
- (b) The first step in the appeal process is an appeal to the administrator. In order to appeal to the administrator for relief, an aggrieved person must file a written appeal in the Fund's office within thirty days of the date of the decision with respect to which relief is requested. The written appeal shall be filed in duplicate. Unless otherwise provided by applicable federal or state law, neither the administrator nor the board shall be required to hear any appeal that is filed after the thirty-day period has expired. The written appeal need not be in any particular form but should contain the following information:
  - (1) The aggrieved person's name, address, and telephone number;
  - (2) A description of the decision with respect to which relief is requested, including the date of the decision;
  - (3) A statement of the relevant and material facts; and
  - (4) A statement as to why the aggrieved person is appealing the decision, including the reasons that support the aggrieved person's position or contentions.
- (c) If the aggrieved person is dissatisfied with the administrator's action or if no action is taken by the administrator on the aggrieved person's written appeal within ninety days of its being filed in the Fund's office, the second step in the appeal process is for the aggrieved person to file a written appeal to the board. A written appeal to the board must be filed in duplicate in the Fund's office. The written appeal need not be in any particular form but shall contain the following information:
  - (1) The aggrieved person's name, address and telephone number;
  - (2) A statement of the nature of the aggrieved person's interest, e.g., employee-beneficiary or dependent-beneficiary;

- (3) A description of the decision with respect to which relief is requested, including, the date of the decision;
- (4) A complete statement of the relevant and material facts;
- (5) A statement of why the aggrieved person is appealing the decision, including a complete statement of the position or contentions of the aggrieved party; and
- (6) A full discussion of the reasons, including any legal authorities, in support of the aggrieved party's position or contentions.

Subject to applicable federal and state law, the board may reject any appeal that does not contain the foregoing information.

- (d) The board at any time may request the aggrieved person or any other party to the proceeding to submit a statement of additional facts or a memorandum, the purpose of which is to clarify the party's position or a specific factual or legal issue.
- (e) The board shall grant or deny the appeal within a reasonable amount of time. The board shall not be required to hold a hearing on any appeal unless otherwise required by applicable federal or state law. If required to hold a hearing, or if it decides to voluntarily hold a hearing on an appeal, subject to applicable federal or state law, the board may set such hearing before the board, a special, or standing committee of the board, a hearings officer, or any other person or entity authorized by the board to hear the matter in question. Nothing in these rules shall require the board to hear or decide any matter that can be lawfully delegated to another person or entity for a hearing and decision.
- (f) At any time, an aggrieved person may voluntarily waive his or her rights to the administrative appeal provided by the Rule by submitting such a waiver in writing to the Fund's office. The board may require the aggrieved person to make such a waiver by signing a form prescribed by it.

## **2.05 Emergency Appeals**

- (a) An employee-beneficiary ("appellant") who is aggrieved by a plan administrator's decision denying or limiting benefits provided under a plan offered by the Fund to the employee-beneficiary or a dependent-beneficiary enrolled by the employee beneficiary may make an emergency



appeal directly to the Board where a delay in following the Fund's normal appeal process could:

- (1) Seriously jeopardize the life or health of the employee-beneficiary or dependent-beneficiary;
  - (2) Seriously jeopardize the employee-beneficiary's or dependent-beneficiary's ability to regain maximum functioning; or
  - (3) In the opinion of a physician with knowledge of the medical condition of the employee-beneficiary or dependent-beneficiary, subject the employee-beneficiary or dependent-beneficiary to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal.
- (b) Any appellant desiring to make an emergency appeal under this Rule shall file a written request with the Fund administrator that contains the following information:
- (1) The name, address, and telephone number of the appellant;
  - (2) A description of the decision with respect to which relief is requested;
  - (3) A statement of the relevant and material facts;
  - (4) A statement as to why the appellant is appealing the decision, including all arguments and reasons that support the appellant's position or contentions;
  - (5) A statement as to why the appellant's appeal qualifies as an emergency appeal, i.e., why the appeal meets one or more of the conditions stated in subsection (a) above;
  - (6) A statement as to exactly what relief the appellant is seeking;
  - (7) Any documents and records that support the appellant's appeal, including, but not limited to, any opinions from physicians that show that the appeal should be handled as an emergency appeal; and
  - (8) If the appellant is going to be represented by a third person on the appeal: (i) a signed authorization by the appellant designating the third person to represent him or her on the appeal; or (ii) other documentation establishing the right of the third person to represent the appellant. Such documentation may include letters of guardianship, a power of attorney, or any other document establishing that the third person may represent the appellant. Appropriate representatives may include, but are not limited to, the parent, child, spouse or domestic partner of the appellant.

Notwithstanding the foregoing, the Fund administrator may waive the foregoing requirements if the Fund administrator finds that the criteria for making an emergency appeal are present and circumstances prevent the appellant from filing a written request for an appeal.

- (c) Within two business days of receipt of a request for emergency appeal, the Fund administrator shall determine whether the request for emergency appeal qualifies as an emergency appeal under the criteria stated in this Rule. If the Fund administrator determines that the request for emergency appeal does not qualify as an emergency appeal, the appellant's appeal shall be handled as a normal appeal. Appellant may appeal the Fund administrator's denial of a request for emergency appeal by filing a written request with the Fund Administrator. No particular form is required for such a written request so long as it can be understood that the appellant is seeking to appeal the Fund administrator's decision to the Board.
- (d) Upon determining that an appeal qualifies as an emergency appeal or upon receipt of an appeal of the Fund administrator's denial of a request for emergency appeal, the Fund administrator shall take the following actions:
  - (1) Set a time and date of a hearing when a quorum of the Board can be present. Subject to quorum requirements, the hearing shall be set within five business days of: (i) the date of the Fund administrator's determination that the appeal qualifies as an emergency appeal, or (ii) the date of receipt of an appeal of the Fund administrator's denial of a request for emergency appeal;
  - (2) Notify the appellant and his or her representative, if any, of the time and date of the hearing;
  - (3) Notify the plan administrator of the time and date of the hearing, provide the plan administrator with a copy of the written request for an emergency appeal filed by the appellant, and invite the plan administrator to submit a written statement of the plan administrator's position regarding the emergency appeal. If the plan administrator submits such a written statement, a copy shall be provided by the Fund administrator to the appellant;
  - (4) In the notices to the appellant and plan administrator, the Fund administrator shall request the parties to provide the Fund administrator with copies of any documents, records, written

- testimony, or other written evidence that they wish the Board to consider at the hearing. To facilitate the hearing, the Fund administrator may request that the parties stipulate to the admission of all or any of such documents, records, written testimony, or other written evidence; and
- (5) Prior to the hearing, the Fund administrator shall provide each member of the Board that will attend the hearing with copies of the written request for an emergency appeal and any written statement of position by the plan administrator.
- (e) Unless the appellant expressly requests a public hearing, any hearing under this Rule shall be closed to the public. At the hearing, the following procedures shall apply:
- (1) The hearing shall be chaired by the EUTF chair, vice-chair, or secretary-treasurer. If none of these officers is present, the Board shall elect one of their members to chair the hearing;
- (2) The chair shall be in charge of regulating the course and conduct of the hearing;
- (3) The chair shall make all rulings on the admission, exclusion, or limitation of testimony and evidence. The admissibility of testimony and evidence shall not be governed by the laws of evidence. All relevant oral or documentary evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant, immaterial, or unduly repetitious material shall not be admitted into evidence. The chair shall give effect to the privileges recognized by law;
- (4) At the outset of the hearing, the chair shall provide a brief overview of the procedures that will apply to the hearing. Following this, the Fund administrator or other representative of the Fund staff shall state the nature and background of the proceeding, including the name of the appellant, the decision being appealed, and the relief being requested;
- (5) After the presentation by the Fund administrator or staff, the appellant shall present his or her testimony, evidence, and arguments in support of the appeal. Following the appellant, the plan administrator shall present its testimony, evidence, and argument, if any, in support of the decision being appealed. At any time during the hearing, the Board may ask questions to the appellant, plan administrator, Fund staff, and any witnesses who

testify at the hearing. At the conclusion of the hearing, both the appellant and plan administrator may present final arguments in support of their positions;

- (6) At any time during the hearing, the Board may enter executive session to consult counsel regarding any legal issues involved in the appeal; and
- (7) Prior to the conclusion of the hearing, the Board shall announce its decision on the appeal to the appellant and plan administrator. The Board shall subsequently issue the Board's decision in writing. A certified copy of the written decision shall be sent by certified mail, return receipt requested, to the appellant and plan administrator within a reasonable time after the hearing.

- (f) The Fund administrator may designate one or more EUTF staff members to perform any or all of the Fund administrator's duties under this Rule when the Fund administrator is unavailable or otherwise unable to perform such duties.

### **3.00 ELIGIBILITY FOR ENROLLMENT**

- 3.01 Health Benefits
- 3.02 Long-Term Care
- 3.03 Group Life Insurance

#### **3.01 Health Benefits**

- (a) Employee-beneficiaries. The following persons shall be eligible to enroll as employee-beneficiaries in the benefit plans offered or sponsored by the Fund:

- (1) An employee;
- (2) A retired employee;
- (3) The surviving spouse or domestic partner of an employee who is killed in the performance of the employee's duty, provided the surviving spouse or domestic partner does not remarry or enter into a domestic partnership;
- (4) The unmarried child of an employee who is killed in the performance of the employee's duty, provided the child is under the age of nineteen and does not have a surviving parent who is eligible to be an employee-beneficiary;
- (5) The surviving spouse or domestic partner of a deceased retired employee, provided the surviving spouse or domestic partner does not remarry or enter into a domestic partnership; and
- (6) The unmarried child of a deceased retired employee, provided the child is under the age of nineteen and does not have a surviving parent who is eligible to be an employee-beneficiary.

With respect to subsections (3) and (5), a surviving spouse or domestic partner ceases to be an eligible employee-beneficiary once the spouse or domestic partner remarries or enters into a domestic partnership even though the spouse or domestic partner may subsequently become single again as a result of an annulment, divorce, legal separation, dissolution of domestic partnership, or death. A surviving domestic partner shall not cease to be eligible under subsections (3) or (5) because the death of the employee or retired employee prevents him or her from further meeting the requirements of parts (1), (2), (3), (6), and (8) of the definition of "domestic partner" in Rule 1.02. With respect to subsections (4) and (6),

an unmarried child ceases to be eligible as of midnight of the child's nineteenth birthday.

Notwithstanding any other provision in these rules to the contrary, an employee-beneficiary who is eligible to enroll in the Medicare Part B medical insurance plan shall not be eligible for coverage under any benefit plan offered or sponsored by the Fund until the employee-beneficiary enrolls in the Medicare Part B medical insurance plan.

- (b) Dependent-beneficiaries. The following persons shall be eligible for coverage as dependent-beneficiaries in the benefit plans offered or sponsored by the Fund:

- (1) An employee-beneficiary's spouse or domestic partner;
- (2) An employee-beneficiary's or domestic partner's unmarried child, provided the child is either under the age of nineteen or a full-time student and under the age of twenty-four;
- (3) An employee-beneficiary's or domestic partner's unmarried child, regardless of age, who is incapable of self-support because of a mental or physical incapacity that existed prior to the child reaching the age of nineteen; and
- (4) A child for whom an employee-beneficiary must provide health benefit coverage under the terms of a qualified medical child support order.

With respect to subsection (2), an unmarried child ceases to be eligible as of midnight of the child's nineteenth or twenty-fourth birthday, as applicable. With respect to subsections (2) and (3), the child of a domestic partner ceases to be eligible upon the dissolution of the domestic partnership. In addition, as a condition of eligibility for any child over the age of nineteen, the employee-beneficiary shall provide the Fund with written proof reasonably satisfactory to the Fund of the full-time student status of such child. Such written proof shall be provided at such times and in such form as the Fund may from time to time direct.

Notwithstanding any other provisions in these rules to the contrary, a dependent-beneficiary who is eligible to enroll in the Medicare Part B medical insurance plan shall not be eligible for coverage under any retiree benefit plan offered or sponsored by the Fund until the dependent-beneficiary has enrolled in the Medicare Part B medical insurance plan.

### **3.02 Long-Term Care**

The following persons shall be eligible for any long-term care benefit plans offered or sponsored by the Fund, provided that they comply with the age, enrollment, medical underwriting and contribution requirements of such plans:

- (1) Employee-beneficiaries and their spouses, parents, and grandparents;
- (2) Employee-beneficiaries' in-law parents and grandparents; and
- (3) Qualified-beneficiaries who enroll between the ages of twenty and eighty-five.

### **3.03 Group Life Insurance**

Employees and retired employees are eligible for any group life insurance plans offered or sponsored by the Fund, provided that they comply with the age, enrollment, underwriting, and contribution requirements of such plans.

## **4.00 ENROLLMENT PROCEDURES**

- 4.01 Application for Enrollment
- 4.02 Rejection of an Enrollment Application
- 4.03 Dual or Multiple Enrollment
- 4.04 Date of Filing
- 4.05 Failure to File Properly Completed Enrollment Application Within the Prescribed Time; Effect on Coverage Dates
- 4.06 Notification of Changes in Personal Information
- 4.07 Verification of Eligibility
- 4.08 Exceptions to the Timely Filing of an Enrollment Application
- 4.09 Open and Special Enrollment Periods
- 4.10 Continuation of Coverage
- 4.11 Contribution Shortage
- 4.12 Cancellation of Enrollment; Effective Dates of Cancellation
- 4.13 Termination of Enrollment; Effective Dates of Termination
- 4.14 Reinstatement of Enrollment

### **4.01 Application for Enrollment**

- (a) An employee-beneficiary shall file an enrollment application, in the form prescribed by the board or by the board's policy, to enroll, change or cancel an enrollment in any benefit plan, including long term care, offered or sponsored by the Fund. Unless otherwise provided by the board or by the board's policy, all enrollment applications shall be filed by the employee-beneficiary with: (1) in the case of an employee, the employee's employer; and (2) in all other cases, the Fund. Notwithstanding the foregoing, upon retirement, an employee-beneficiary shall file an enrollment application to enroll or change enrollment in the benefit plans offered or sponsored by the Fund with the entity that pays his or her retirement or pension allowance. Thereafter, the retired employee-beneficiary shall file any and all enrollment applications directly with the Fund.
- (b) With due consideration of appropriate federal or state laws, the board shall set the standards and procedures for filing such enrollment applications, including, but not limited to, the form of such enrollment applications, the information required to be provided by the employee-beneficiary on such enrollment applications, and the method for filing such enrollment



applications. Enrollment applications shall include the employee-beneficiary's authorization to the state comptroller or the appropriate county director of finance to assign sufficient compensation to the Fund in payment of all contributions due from such employee-beneficiary for enrollment or coverage in any and all Fund benefit plans.

- (c) A representative of an employee-beneficiary may file an enrollment application for the employee-beneficiary if:
  - (1) The representative has a written authorization signed by the employee-beneficiary that authorizes the representative to file such enrollment applications; or
  - (2) A valid court order authorizes the representative to file such enrollment applications.

#### **4.02 Rejection of an Enrollment Application**

- (a) Any enrollment application may be rejected if it is incomplete or does not contain all information required to be provided by the employee-beneficiary.
- (b) An enrollment application shall be rejected if:
  - (1) The application seeks to enroll a person who is not eligible to enroll in the benefit plan for which enrollment is requested;
  - (2) The application is not filed within the time limitations prescribed by these rules;
  - (3) The application contains an intentional misstatement or misrepresentation of a material fact or contains other information of a fraudulent nature;
  - (4) The employee-beneficiary owes past due contributions or other amounts to the Fund; or
  - (5) Acceptance of the application would violate applicable federal or state law or any other provision of these rules.
- (c) Notification shall be provided to the employee-beneficiary of the rejection of any enrollment application.

#### **4.03 Dual or Multiple Enrollment**

- (a) No person may be enrolled simultaneously in any benefit plan offered or sponsored by the Fund as both an employee-beneficiary and a dependent-beneficiary, nor may unmarried children be enrolled by more than one employee-beneficiary. The Fund shall cancel such dual coverage enrollments.
- (b) Where an employee-beneficiary files more than one enrollment application, the enrollment application bearing the latest filing date shall be the one used by the Fund to process the employee-beneficiary's enrollment, provided the employee-beneficiary is eligible for such enrollment.

#### **4.04 Date of Filing**

An employee-beneficiary's enrollment application, beneficiary designation, or any other form required to be filed with the Fund shall be deemed to have been filed with the Fund on the date that the following entities, as applicable, actually receive such forms: (1) the employee-beneficiary's employer; (2) the entity that pays the employee-beneficiary's retirement or pension allowance; or (3) the Fund. However, if filed before the time or times prescribed in these rules, an enrollment application, beneficiary designation, or other form shall be deemed to have been filed on the date that the person would have been first eligible to file that document.

#### **4.05 Failure to File Properly Completed Enrollment Application Within the Prescribed Time; Effect on Coverage Dates**

Except as otherwise provided in these rules or by applicable federal or state law, the following shall apply to all applications to enroll in the benefit plans offered or sponsored by the Fund, to add or delete dependent-beneficiaries, or to change enrollments or coverages:

- (a) No enrollment of an employee-beneficiary, addition or deletion of a dependent-beneficiary, or change in an enrollment or coverage shall be effective without the filing of a properly completed enrollment application.
- (b) The effective dates of coverage, deletions of coverage, and changes in coverage shall be dependent on the filing of a properly completed

enrollment application within thirty days of the specified event that allows the filing of the application.

- (c) An employee-beneficiary who fails to file an enrollment application within the time prescribed by subsection (b) or any otherwise applicable rule shall not be permitted to file that application until the next open or special enrollment period.

#### **4.06 Notification of Changes in Personal Information**

Each employee-beneficiary shall immediately notify the Fund in writing of any changes in the employee-beneficiary's name or address or marital or domestic partnership status, of the birth or adoption of a child or any other changes in the family status of the employee-beneficiary, and any other material changes in the information previously filed by the employee-beneficiary as part of an enrollment application. Each notice to the Fund shall be submitted through the employee-beneficiary's employer or, if none, shall be submitted directly to the Fund.

#### **4.07 Verification of Eligibility**

The board may require periodic verification of eligibility for employee-beneficiaries and dependent-beneficiaries enrolled by an employee-beneficiary in Fund benefit plans. The board may set standards and procedures for the required verification. If verification is not provided in accordance with the standards and procedures established by the board, the dependent-beneficiary's enrollment shall be cancelled as set forth in Rule 4.12(d).

#### **4.08 Exceptions to the Timely Filing of an Enrollment Application**

- (a) Rule 4.05 and the times for filing enrollment applications prescribed in these rules shall not apply to the following persons:
  - (1) Retired members who are currently enrolled in a benefit plan offered or sponsored by the Fund;
  - (2) The surviving spouse, domestic partner, or any unmarried child under the age of nineteen of a deceased retired member who is eligible as an employee-beneficiary under Rule 3.01(a); and

- (3) The surviving spouse, domestic partner, or any unmarried child under the age of nineteen of any employee who is killed in the performance of duty who is eligible as an employee-beneficiary under Rule 3.01(a).
- (b) Coverage for the persons covered by subsection (a) shall become effective on the later of:
  - (1) The date of the event that makes the person eligible for enrollment when a properly completed enrollment application is filed within thirty days of the event; or
  - (2) The first day of the month following the date the person files a properly completed enrollment application.
- (c) Nothing in this rule shall permit an employee-beneficiary or dependent-beneficiary who is eligible to enroll in the Medicare Part B medical insurance plan to be covered under any benefit plan offered or sponsored by the Fund until enrolled in the Medicare Part B medical insurance plan. Further, nothing in this rule is meant to permit the enrollment of any person who is not otherwise eligible for enrollment in the benefit plan offered or sponsored by the Fund.

#### **4.09 Open and Special Enrollment Periods**

Except as otherwise provided by these rules, an employee-beneficiary may file an enrollment application during an open or special enrollment period to make any one or a combination of specific enrollment changes that have been approved by the board for that open or special enrollment period. The changes that the board may approve include, but are not limited to, changes from non-enrolled to enrolled status, changes between plans, changes in levels of coverage, and cancellations. All changes made shall become effective on the date approved by the board for the open or special enrollment period.

#### **4.10 Continuation of Coverage**

Subject to applicable federal and state law, coverage under the benefit plans offered or sponsored by the Fund shall continue:

- (a) Provided the employee-beneficiary meets the eligibility provisions of Rule 3.01 and pays the employee's premium contribution as provided by

statute, the employer's administrative rules, or an applicable bargaining unit agreement;

- (b) While the employee-beneficiary participates in an employee strike authorized by chapter 89, Hawaii Revised Statutes, provided that nothing in this rule shall limit the right or ability of the Fund to collect premium contributions from any public employer or employee-beneficiaries or the remedies available to the Fund to collect such premium contributions.
- (c) When an employee terminates employment and is rehired by a public employer within the same pay period or the next consecutive pay period, the employee shall be considered as having transferred employment. The employee shall be treated as if continuously enrolled in the Fund benefit plans in which the employee was enrolled at the time of termination and shall be required to pay the full cost of coverage to the extent that such is not paid by the employee's public employer. The employee shall not be allowed to change between plans unless the employee's current Fund benefit plan is unavailable at the employee's new employment location.

#### **4.11 Contribution Shortages**

A notice of contribution shortage shall be sent to an employee-beneficiary at his or her last known address if any portion of the employee-beneficiary's required semi-monthly contributions is not paid or is not withheld from the employee-beneficiary's earnings and transmitted to the Fund. The notice shall be sent within thirty days of the date on which the required semi-monthly contribution payment was due. Cancellation of the employee-beneficiary's enrollment due to any contribution shortage shall be as per Rule 4.12(c), and reinstatement of the employee-beneficiary's enrollment after any such cancellation shall be as per Rule 4.14(b).

#### **4.12 Cancellation of Enrollment; Effective Dates of Cancellation**

- (a) Voluntary Cancellation Requested by the Employee-Beneficiary. An employee-beneficiary may voluntarily cancel enrollment in a Fund benefit plan at any time by filing an enrollment application requesting cancellation with the employee-beneficiary's employer or, if none, directly with the Fund. The effective date of cancellation shall be the first day of the pay period following the requested cancellation date or, if no date is specified, the effective date of cancellation shall be the first day of the pay

period after which the Fund receives the employee-beneficiary's request for cancellation.

- (b) Cancellation Due to Ineligibility. The enrollment of any ineligible person who was enrolled in error or is ineligible to enroll in or be covered in a benefit plan offered or sponsored by the Fund shall be canceled:
  - (1) When the person is notified of the error or ineligibility prior to the effective date of the enrollment, the person shall be treated as if the enrollment application was not submitted.
  - (2) When the person is notified after the effective date of the enrollment, the enrollment shall be canceled on the first day of the second pay period that follows the date of the Fund's notice of cancellation to the ineligible person or employee-beneficiary.
- (c) Cancellation Due to Failure to Pay Contribution Shortage. If any portion of an employee-beneficiary's required semi-monthly or monthly contributions is not paid or is not withheld from the employee-beneficiary's earnings and transmitted to the Fund within 30 days of the date of the notice of contribution shortage, the employee-beneficiary's enrollment and all coverages for dependent-beneficiaries under that enrollment shall be cancelled as of the first day following the last period for which full payment of the employee-beneficiary's required semi-monthly or monthly contributions were paid and transmitted to the Fund. However, the enrollment of the employee-beneficiary and his or her dependent-beneficiaries may be reinstated as provided in Rule 4.14(b). Cancellation of an employee-beneficiary's enrollment pursuant to this rule shall not affect the Fund's right to collect any and all contribution shortages from the employee-beneficiary.
- (d) Cancellation Due to Failure to Comply with Rules. If an employee-beneficiary materially fails to comply with any of the Fund's rules, the employee-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment may be canceled after notice of such has been provided to the employee-beneficiary. The board may set standards and procedures for providing notice to employee-beneficiaries under this rule. The notice shall at a minimum specify how the employee-beneficiary has failed to comply with the Fund's rules, and a date by which the employee-beneficiary must comply with the Fund's rules in order to avoid

cancellation. The effective date of the cancellation shall be the date set forth in the notice as to when the employee-beneficiary must comply with the Fund's rules in order to avoid cancellation.

#### **4.13 Termination of Enrollment; Effective Dates of Termination**

- (a) Termination Due to Change in Employment Status. An employee-beneficiary's enrollment in all benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment shall be terminated upon the employee-beneficiary's loss of eligibility to participate in such plans due to a change in employment status. The effective date of the termination shall be the first day of the pay period following the effective date of the change in employment status.
- (b) Termination Due to Filing of Fraudulent Claims. An employee-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment may be terminated if the employee-beneficiary files fraudulent claims for benefit. A dependent-beneficiary's coverage in all of the benefit plans offered or sponsored by the Fund may be terminated if the dependent-beneficiary files fraudulent claims for coverage and/or benefits. The effective date of the termination shall be the date that the Fund determines that the employee-beneficiary or dependent-beneficiary, as applicable, has filed fraudulent claims.
- (c) Notice to the Fund; Recovery of Benefits. If an event occurs that makes a person ineligible for continued enrollment or coverage in the benefit plans offered or sponsored by the Fund, that person or employee-beneficiary shall notify the Fund of the event as soon as reasonably practicable. All such notices shall be in writing and shall be sent to the Fund. The Fund shall be entitled to seek recovery of any benefits that were provided to any person after an event that terminated the person's enrollment or that otherwise made that person ineligible for continued enrollment in or coverage by the benefit plans offered or sponsored by the Fund. In seeking to recover benefits under this rule, the Fund shall have the rights of offset and set-off, including without limitation, the right to recover amounts from and out of any and all future benefits payable to the person whose enrollment was terminated or who otherwise ceased to be eligible for continued enrollment or coverage in the Fund's benefit plans.

#### **4.14 Reinstatement of Enrollment**

- (a) General Rule. Unless another rule of the Fund expressly applies, an employee-beneficiary whose enrollment in any of the Fund's benefit plans has been cancelled or terminated may not apply for reinstatement in those benefit plans. The employee-beneficiary may only apply for a new enrollment during the Fund's next open enrollment period. Any such new enrollment may be conditioned upon the employee-beneficiary meeting all the Fund's rules for eligibility and enrollment, curing any past deficiencies or failures that led to the employee-beneficiary's cancellation or termination, and providing adequate assurance that the employee-beneficiary will not further engage in the conduct that previously led to the employee-beneficiary's cancellation or termination. Nothing in this Rule shall be deemed to require the Fund to re-enroll any employee-beneficiary whose enrollment has been previously cancelled or terminated.
  
- (b) Contribution Shortage Cancellation. If an employee-beneficiary's enrollment in the Fund's benefit plan or plans has been cancelled under Rule 4.12 (c), the employee-beneficiary's enrollment in such benefit plan or plans may be reinstated if the employee-beneficiary makes full payment of all contributions due from the employee-beneficiary by the date specified in the contribution shortage notice provided for in Rule 4.11. The reinstatement shall be made so that the employee-beneficiary and his or her dependent-beneficiaries shall suffer no break in coverage. However, if the employee-beneficiary fails to pay all contribution shortages by the date specified in the contribution shortage notice provided for in Rule 4.11, the employee-beneficiary will suffer a break in coverage and may only apply for a new enrollment at the next open enrollment as per Rule 4.14 (a).



## **5.00 HEALTH AND OTHER BENEFIT PLANS**

- 5.01 Enrollment; Effective Dates of Coverage
- 5.02 Changes in Enrollment; Effective Dates of Coverage
- 5.03 Mandatory Change to Medicare Supplemental Plan for Retired Employees
- 5.04 Cancellation Due to Failure to Enroll in Medicare; Effective Date of Cancellation
- 5.05 Termination of Enrollment; Effective Dates of Termination
- 5.06 Reinstatement of Enrollment; Effective Dates of Reinstatement

### **5.01 Enrollment; Effective Dates of Coverage**

- (a) New Employee. An employee-beneficiary may enroll in the health benefit plans offered or sponsored by the Fund and obtain coverage for eligible dependent-beneficiaries when the employee-beneficiary is first hired as an employee. At the option of the employee-beneficiary, the effective date of coverage shall be one of the following dates: (1) the date the employee beneficiary is first hired; (2) the first day of the first pay period following the date the employee-beneficiary is first hired; or (3) the first day of the second pay period following the date the employee-beneficiary is first hired. The employee-beneficiary shall select the effective date of coverage in an enrollment application filed within thirty (30) days of the date that the employee-beneficiary is first hired. If the employee-beneficiary fails to make a selection, the effective date of coverage shall be the date the employee-beneficiary is first hired.
- (b) Newly Eligible Employee. An employee-beneficiary, other than a retired member, may enroll in the health benefit plans offered or sponsored by the Fund and obtain coverage for eligible dependent-beneficiaries when the employee-beneficiary first becomes an employee due to a change in employment status. At the option of the employee-beneficiary, the effective date of coverage shall be one of the following dates: (1) the date the change in employment status occurs; (2) the first day of the first pay period following the date the change in employment status occurs; or (3) the first day of the second pay period following the date the change in employment status occurs. The employee-beneficiary shall select the effective date of coverage in an enrollment application filed within (30) days of the date the change in employment status occurs. If the employee-

beneficiary fails to make a selection, the effective date of coverage shall be the date the change in employment status occurs.

- (c) Loss of Coverage in a Benefit Plan Offered by the Fund. An employee-beneficiary may enroll in the health benefit plans offered or sponsored by the Fund and obtain coverage for dependent-beneficiaries when the employee-beneficiary loses coverage under the benefit plans offered or sponsored by the Fund because the employee-beneficiary's covering enrollment was terminated or the employee-beneficiary ceased to be eligible as a dependent-beneficiary. The effective date of coverage shall be the date of the employee-beneficiary's loss of coverage.
- (d) Loss of Coverage in a Non-Fund Health Benefit Plan. An employee-beneficiary who is eligible but not enrolled, may enroll in the health benefit plans offered or sponsored by the Fund, and obtain coverage for eligible dependent-beneficiaries, when the employee-beneficiary meets the conditions required for a special enrollment under 26 U.S.C. §9801(f) and the federal regulations enacted under or pursuant to that statute. These conditions are:
  - (1) At the time that coverage under the Fund's health benefit plans were offered to the employee-beneficiary, the employee-beneficiary was covered by a Non-Fund health benefit plan or a COBRA continuation provision; and
  - (2) The employee-beneficiary declined coverage under the Fund's health benefit plans because of the employee-beneficiary's coverage under the Non-Fund health benefit plan or a COBRA continuation provision; and
  - (3) The employee-beneficiary's coverage under the Non-Fund health benefit plan was terminated as a result of loss of eligibility for that coverage (including as a result of legal separation, divorce, death, termination of employment or reduction of hours of employment) or because employer contributions towards such coverage was terminated; or
  - (4) The employee-beneficiary's coverage under the COBRA continuation provision was exhausted.

The effective date of the coverage under Rule 5.01(d) shall be as follows:  
If a properly completed enrollment application is filed within thirty (30) days of the date that the employee-beneficiary loses coverage or the date that the employee-beneficiary's COBRA continuation coverage is

exhausted, whichever event is applicable, the effective date of coverage will be the date of that event. If a properly completed enrollment application is filed more than thirty (30) days after the event, the effective date of coverage will be the first day of the pay period after the enrollment application is received.

- (e) Enrollment Due to Changes in Marital, Domestic Partnership or Family Status. An employee-beneficiary who has previously declined coverage in the health benefit plans offered or sponsored by the Fund may enroll in the Fund benefit plans when the employee-beneficiary gains a dependent through a change in marital, domestic partnership or family status, e.g., marriage, entry into domestic partnership, birth, adoption, or issuance of a qualified medical child support order. At the option of the employee-beneficiary, the effective date of enrollment shall be:
- (1) With respect to a change in marital or domestic partnership status, any of the following: (i) The date the Fund receives proper notification of the change in marital or domestic partnership status, (ii) the first day of the first pay period following the date the Fund receives such notification, or (iii) the first day of the second pay period following the date the Fund receives such notification;
  - (2) With respect to the birth, adoption, or placement for adoption of a child, any of the following: (i) the date of the child's birth, adoption, or placement for adoption; (ii) the first day of the first pay period following the date of the child's birth, adoption, or placement for adoption; or (iii) the first day of the second pay period following the date of the child's birth, adoption, or placement for adoption; and
  - (3) With respect to the issuance of a qualified medical child support order, the date specified in the order, or if no date is specified, the date that the order is issued.

The employee-beneficiary shall select the effective date of coverage in an enrollment application filed within thirty (30) days of the date of the event described in Rule 5.01(e)(1)(i) or Rule 5.01(e)(2)(i), as applicable. If the employee-beneficiary fails to make a selection, the effective date of coverage shall be the date of the event described in Rule 5.01(e)(1)(i) or Rule 5.01(e)(2)(i), as applicable.

- (f) Enrollment or Changes in Enrollment Upon Retirement. An employee-beneficiary may enroll or change coverages in the health benefit plans

offered or sponsored by the Fund and obtain coverage for eligible dependent-beneficiaries when that person begins to receive a retirement allowance from a state or county retirement system. The effective date of the coverage shall be the employee-beneficiary's date of retirement.

- (g) Surviving Spouse, Domestic Partner, or Child of a Deceased Retiree or an Employee Who was Killed in the Performance of Duty. A surviving spouse, domestic partner or unmarried child who is eligible as an employee-beneficiary under Rule 3.01(a) may enroll in the health benefit plans offered or sponsored by the Fund. The effective date of coverage shall be determined under Rule 4.08, the date of the event that permits enrollment being the date that the retiree deceases or the date that the employee is killed in the performance of duty, whichever is applicable.
- (h) The public employer's premium contributions and employee-beneficiary's premium contributions, if any, shall begin as of the first day of the pay period during which the employee-beneficiary's effective date of coverage occurs. The contributions shall not be prorated based on when the employee-beneficiary's coverage begins during the pay period. For example, if an employee-beneficiary's effective date of coverage occurs on any date during the first pay period of a month (first half of a month), the public employer and employee-beneficiary shall make contributions as if the employee-beneficiary had been enrolled in the applicable health benefit plans as of the first day of that first pay period. Similarly, if there is a change in contributions due to an employee-beneficiary's change in enrollment or coverage, the change in contributions shall begin as of the first day of the pay period during which the change in enrollment or coverage occurs. For example, if an employee-beneficiary changes enrollment or coverage during any date during the second pay period of a month (second half of a month), the public employer and employee-beneficiary shall make contributions as if the change in enrollment or coverage had occurred as of the first day of that second pay period.

## **5.02 Changes in Enrollment; Effective Dates of Coverage**

- (a) Additions of Dependents Due to Changes in Marital, Domestic Partnership or Family Status. An employee-beneficiary may change his or her enrollment to add coverage for dependent-beneficiaries in the Fund health benefit plans in which the employee-beneficiary is currently enrolled upon the occurrence of any of the following events: marriage, entry into domestic partnership, birth of a child, adoption of a child, addition of a

foster child, or the issuance of a qualified medical support order. At the option of the employee-beneficiary, the effective date of the change in enrollment shall be:

- (1) With respect to the addition of a spouse, foster child, or other dependent-eligible, any of the following dates: (i) the date that the Fund receives proper notification of the addition of the spouse, foster child, or other dependent-eligible, (ii) the first day of the first pay period following the date that the Fund receives such notification, or (iii) the first day of the second pay period following the date that the Fund receives such notification; or
- (2) With respect to the birth of a child, any of the following dates: (i) the date of the child's birth, (ii) the first day of the first pay period following the date of the child's birth, or (iii) the first day of the second pay period following the date of the child's birth; or
- (3) With respect to the adoption of a child at birth, any of the following dates: (i) the date of the child's birth, provided that the employee-beneficiary provides the Trust Fund with a written certification of intent to adopt the child (in form and content satisfactory to the Fund) and an enrollment application for the child prior to the child's birth or within thirty days thereafter, (ii) the first day of the first pay period following the date of the child's birth, subject to the same conditions set forth above, or (iii) the second day of the second pay period following the date of the child's birth, subject to the same conditions set forth above; or
- (4) With respect to the adoption of a child after birth, any of the following dates: (i) the date of the adoption, provided that the employee-beneficiary provides the Fund with satisfactory documents evidencing the adoption and an enrollment application for the child within thirty days of the date of adoption, (ii) the first day of the first pay period following the date of the adoption, subject to the same conditions set forth above, or (iii) the first day of the second pay period following the date of adoption, subject to the same conditions set forth above; or
- (5) With respect to a child placed for adoption, any of the following dates: (i) the date that the employee-beneficiary assumes custody of and an obligation to support the child in anticipation of adopting the child, provided that the employee-beneficiary provides the Fund with a written certification of intent to adopt the child (in form and content satisfactory to the Fund) and an enrollment application for the child within thirty days of the date that the

- employee-beneficiary assumes custody of and an obligation to support the child, (ii) the first day of the first pay period following the date that the employee-beneficiary assumes custody of and an obligation to support the child in anticipation of adopting the child, subject to the same conditions set forth above, or (iii) the first day of the second pay period following the date that the employee-beneficiary assumes custody of and an obligation to support the child in anticipation of adopting the child, subject to the same conditions set forth above; or
- (6) With respect to a qualified medical child support order, the date specified in the order, or if no date is specified, the date that the order is issued.

Notwithstanding Rule 5.02(a) (5), the effective date of coverage for a child placed for adoption may be any other date that is specified: in an applicable court order, by a government agency placing the child, or by a licensed child placing organization placing the child. Except as otherwise required by law or these rules, Rule 4.05 shall apply to changes of enrollment under this Rule and the employee-beneficiary shall select the effective date of coverage in an enrollment application filed within thirty (30) days of the event described in Rule 5.02(a)(1)(i), 5.02(a)(2)(i), 5.02(a)(3)(i), 5.02(a)(4)(i), or 5.02(a)(5)(i), as applicable. If the employee-beneficiary fails to make a selection, the effective date of coverage shall be the date of the event described in Rule 5.02(a)(1)(i), 5.02(a)(2)(i), 5.02(a)(3)(i), 5.02 (a)(4)(i), or 5.02(a)(5)(i), as applicable.

- (b) Deletions of Dependents Due to Changes in Marital, Domestic Partner or Family Status. An employee-beneficiary shall change his or her enrollment to terminate coverage of dependent-beneficiaries who cease to be eligible for continued enrollment in the Fund health benefit plans upon the occurrence of any of the following events: divorce or dissolution; annulment; legal separation; dissolution or other act ending domestic partnership; death of a spouse, domestic partner or child; failure to complete the adoption of a child; the end of any required coverage of a child under a qualified medical support order; or a child ceases to be eligible for coverage as a dependent-beneficiary under Rule 3.01(b). The effective date of change in coverage shall be the first day of the first pay period following the occurrence of the event. Employee-beneficiaries and dependent-beneficiaries are required to provide the Fund with written notice of the occurrence of these events as soon as reasonably practicable pursuant to Rule 4.06 and Rule 4.13(c).

- (c) Loss of Spouse's or Domestic Partner's Coverage. An employee-beneficiary may change enrollment to add a spouse or domestic partner as a dependent-beneficiary in the Fund health benefit plans in which the employee-beneficiary is currently enrolled when the employee-beneficiary's spouse or domestic partner has lost coverage in any health benefit plan due to an employment termination or other loss of eligibility. The effective date of the change in enrollment shall be the date that the employee-beneficiary's spouse or domestic partner lost coverage in the spouse's or domestic partner's health benefit plan.
- (d) Last Child Becomes Ineligible. An employee-beneficiary may change his or her enrollment in the Fund health benefit plans in which the employee-beneficiary is currently enrolled when the last of the employee-beneficiary's children becomes ineligible for coverage as a dependent-beneficiary under the health benefit plans offered or sponsored by the Fund, e.g., when the child marries, becomes nineteen years of age and is not a full-time student, is between nineteen and twenty-four years of age and ceases to be a full-time student, or becomes twenty-four years of age. The effective date of the change in enrollment shall be the date on which the child lost eligibility.

Notwithstanding Rule 4.06, if the employee-beneficiary fails to give the appropriate notice to the Fund within thirty days of the event, the effective date of the change in coverage shall be the date on which notice was received by the Fund.

- (e) Changes Between Plans. An employee-beneficiary may change between health benefit plans offered or sponsored by the Fund when:
- (1) The employee-beneficiary moves to a residence outside of the geographic areas covered by the employee-beneficiary's present benefit plan. The effective date of the change shall be the date of the employee-beneficiary's relocation.
  - (2) The employee-beneficiary is enrolled in a supplemental health benefits plan offered or sponsored by the Fund and loses primary coverage in a Non-Fund health benefits plan. The effective date of the change shall be the date that the employee-beneficiary loses coverage in the Non-Fund health benefits plan.

- (f) Any change in the public employer's premium contributions and the employee-beneficiary's premium contributions, if any resulting from a change in enrollment or coverage shall begin as of the first day of the pay period in which the effective date of the employee-beneficiary's change in enrollment or coverage occurs. As in Rule 5.01(h), contributions shall not be prorated based on when the employee-beneficiary's change in enrollment or coverage occurs during the pay period.

### **5.03 Mandatory Enrollment in Medicare Part B for Retired Employees**

- (a) An employee-beneficiary or a dependent-beneficiary shall submit a Notice of Enrollment along with proof of enrollment in the federal Medicare Part B medical insurance plan when the employee-beneficiary or dependent-beneficiary becomes eligible to enroll in the federal Medicare Part B medical insurance plan. Notwithstanding Rule 4.05, the effective date of coverage shall be the later of the following:
  - (1) The date that the employee-beneficiary or dependent-beneficiary becomes eligible for Medicare provided that proof of enrollment in Medicare Part B is submitted; or
  - (2) The first day of the month in which the Fund receives the employee-beneficiary or dependent-beneficiary's enrollment application and proof of enrollment in Medicare Part B.
- (b) Each public employer shall pay to the Fund a contribution equal to \$50 per month, or such other amount as is determined by the board, for voluntary medical insurance coverage under Medicare for retired members of the employees' retirement system, county pension system, or a police, firefighters, or bandsmen pension of the State or a county as set forth in Chapter 88 of the Hawaii Revised Statutes. Out of such contributions, the Fund shall reimburse the premiums paid, exclusive of any and all Medicare penalties, by the following persons for Medicare Part B medical insurance coverage in the amount of \$50 per month or such other amount as is determined by the board:
  - (1) An employee-beneficiary who is a retired employee;
  - (2) The employee-beneficiary's spouse or domestic partner while the employee-beneficiary is living; and



- (3) The employee-beneficiary's spouse or domestic partner after the death of the employee-beneficiary, if the spouse or domestic partner qualifies as an employee-beneficiary under Rule 3.01(a).

Payment of these reimbursements shall be made only for those persons who are enrolled in the Medicare Part B medical insurance plan and pay their Medicare Part B medical insurance premiums to the Social Security Administration.

#### **5.04 Cancellation Due to Failure to Enroll in Medicare; Effective Date of Cancellation**

- (a) If an employee-beneficiary becomes eligible to enroll and fails to enroll in the federal Medicare Part B medical insurance plan, the employee-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment shall be cancelled.
- (b) If a dependent-beneficiary becomes eligible to enroll and fails to enroll in the federal Medicare Part B medical insurance plan, the dependent-beneficiary's enrollment in all of the benefit plans offered or sponsored by the Fund shall be cancelled.
- (c) The effective date of any cancellation under this rule shall be the date upon which the employee-beneficiary or dependent-beneficiary, as applicable, first became eligible to enroll in the federal Medicare Part B medical insurance plan.

#### **5.05 Termination of Enrollment; Effective Dates of Termination**

- (a) Termination Due to Surviving Spouse's or Domestic Partner's Remarriage or Entry into Domestic Partnership. A surviving spouse's or domestic partner's enrollment in all benefit plans offered or sponsored by the Fund and all coverages for dependent-beneficiaries under that enrollment shall be terminated upon the surviving spouse's or domestic partner's remarriage or entry into a domestic partnership. The effective date of the termination shall be the first day of the pay period following the date of the surviving spouse's or domestic partner's remarriage or entry into a domestic partnership. Notwithstanding the foregoing, the child of a deceased retiree that is eligible to be an employee-beneficiary under Rules 3.01(a)(4) or Rule 3.01(a)(6) may continue his or her coverages by filing an enrollment application under Rule 5.01(g). The effective date of

coverage shall be as provided in Rule 4.08(b), the date of the event making the person eligible for enrollment being the date of termination of coverage due to the surviving spouse's or domestic partner's remarriage or entry into a domestic partnership.

- (b) Termination Due to Child's Loss of Eligibility. A child's enrollment in all benefit plans offered or sponsored by the Fund shall be terminated upon the occurrence of any of the following events:

- (1) The child marries;
- (2) The child enters active military duty;
- (3) The child reaches the age of nineteen and is not a full-time student;
- (4) The child is between the ages of nineteen and twenty-four and ceases to be a full-time student;
- (5) The child, while still a full-time student, reaches the age of twenty-four; or
- (6) The employee-beneficiary fails to complete a legal adoption of the child within twelve months of the date that the child is covered by the Fund's benefit plans.

Notwithstanding Rule 5.05 (b) (6), the enrollment of a child placed for adoption shall not be terminated if the employee-beneficiary has custody of and an obligation to support the child under a court order or agreement with a government agency or licensed child placing organization.

With respect to subsections (1) and (2), the loss of eligibility as a dependent-beneficiary is permanent. Unless provided otherwise by these rules or applicable federal or state law, the effective date of the termination shall be the first day of the pay period following the date of the event or, in an event under Rule 5.05 (b) (6), the date stated in a written notice to the employee-beneficiary.

#### **5.06 Reinstatement of Enrollment; Effective Dates of Reinstatement**

- (a) Reinstatement in Employment. If as a result of an order or award from a court, arbitrator or other entity with proper jurisdiction over the matter, an employee-beneficiary is found to have been wrongfully terminated or suspended and is ordered to be reinstated in state or county employment, the employee-beneficiary shall be reinstated in the same Fund benefit plans from which the employee-beneficiary's coverage was terminated. The effective date of the reinstatement shall be the date of termination so

that the employee-beneficiary's coverage is continuous, provided that the employee-beneficiary pays the full cost of such coverage less any contribution paid by the employer on behalf of the employee-beneficiary as provided by statute, the employer's administrative rules, or an applicable bargaining unit agreement.

If the full cost of such coverage is not paid, the employee-beneficiary shall have the option of having the reinstatement effective upon any of the following dates: (i) the employee-beneficiary's return to active duty, (ii) the first day of the first pay period following the employee-beneficiary's return to active duty, or (iii) the first day of the second pay period following the employee-beneficiary's return to active duty. The employee-beneficiary shall select the effective date of coverage in an enrollment application filed within thirty (30) days of the date that the employee-beneficiary returns to active duty. If the employee-beneficiary fails to make a selection, the effective date of coverage shall be the date the employee-beneficiary returns to active duty.

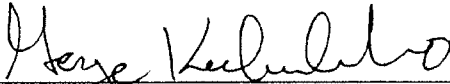
- (b) Return From an Authorized Leave of Absence. If an employee-beneficiary returns from an authorized leave of absence ("LOA") during which coverage was not provided by a Fund benefit plan, the employee-beneficiary may be reinstated in the same Fund benefit plans from which coverage was cancelled if the employee-beneficiary files a properly completed enrollment application. At the option of the employee-beneficiary, the reinstatement shall be effective upon any of the following dates: (i) the employee-beneficiary's return from the LOA provided the employee-beneficiary files an enrollment application in accordance with Rule 4.05 within thirty (30) days of his or her return from the LOA, (ii) the first day of the first pay period following the employee-beneficiary's return from the LOA, subject to the same conditions set forth above, or (iii) the first day of the second pay period following the employee-beneficiary's return from the LOA, subject to the same conditions set forth above. If the employee-beneficiary fails to timely file an enrollment application, the reinstatement shall be effective on the first day of the first pay period following the employee-beneficiary's proper filing of the enrollment application.
- (c) Return From a Leave of Absence Covered by the Family Medical Leave Act (FMLA) Or Uniform Services Employment and Reemployment Rights Act (USERRA). If an employee-beneficiary returns from a leave of absence covered under the FMLA or USERRA and the employee-

beneficiary's enrollment in the Fund benefit plans was canceled during that leave of absence, the employee-beneficiary shall be reinstated in the same Fund benefit plans from which coverage was canceled. At the option of the employee-beneficiary, reinstatement shall be effective upon any of the following dates: (i) the date of the employee-beneficiary's return to work, (ii) the first day of the first pay period following the date of the employee-beneficiary's return to work, or (iii) the first day of the second pay period following the date of the employee-beneficiary's return to work. The employee-beneficiary shall select the effective date of coverage in an enrollment application filed within thirty (30) days of the date that the employee-beneficiary returns to work. If the employee-beneficiary fails to make a selection, the effective date of coverage shall be the date of the employee-beneficiary's return to work.

- (d) Enrollment in Medicare by a Retired Employee. If the enrollment of an employee-beneficiary or the coverage of a dependent-beneficiary was terminated due to the employee-beneficiary's or dependent-beneficiary's failure to enroll in the federal Medicare Part B medical insurance plan, upon the employee-beneficiary's or dependent-beneficiary's enrollment in such plan and submission of a proper and complete enrollment application to the Fund, the employee-beneficiary or dependent-beneficiary shall be enrolled in or covered by the Medicare supplemental plan offered by the Fund. The coverage shall be effective on the date specified in Rule 5.03.
- (e) The public employer's premium contributions and the employee-beneficiary's premium contributions, if any, shall begin as of the first day of the pay period during which the employee-beneficiary's effective date of coverage occurs. Similarly, if there is a change in contributions due to an employee-beneficiary's change in enrollment or coverage, the change in contributions shall begin as of the first day of the pay period during which the change in enrollment or coverage occurs. As in Rule 5.01(h), contributions shall not be prorated based on when the employee-beneficiary's coverage begins during the pay period or on when an employee-beneficiary's change in enrollment or coverage occurs during the pay period.

The Hawaii Employer-Union Health Benefits Trust Fund Board of Trustees Administrative Rules were adopted during a regular meeting of the Board of Trustees on February 19, 2003, which were amended and approved on

May 19, 2004, August 25, 2004, September 28, 2005, March 22, 2006,  
September 26, 2007, August 20, 2008, and August 26, 2009. The rules shall take  
effect on the first day after filing with the Lieutenant Governor's Office.



George Kahooohanohano, Chairperson  
Hawaii Employer-Union Health  
Benefits Trust Fund

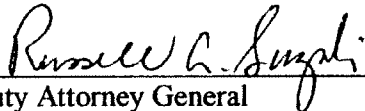
APPROVED



Linda Lingle  
Governor  
State of Hawaii

Date Filed, Office of the Lieutenant  
Governor

APPROVED AS TO FORM:



Deputy Attorney General

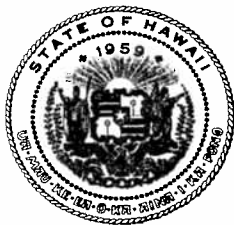
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## **APPENDIX C**

### **ANNUAL REPORT OF THE EUTF**



**ANNUAL REPORT**

**FISCAL YEAR 2008-09**

**Hawaii Employer-Union Health Benefits Trust Fund  
State of Hawaii**

**December 2009**

This report presents an overview of the activities of the Hawaii Employer-Union Health Benefits Trust Fund (“EUTF”) for the fiscal year 2008 - 2009. The EUTF is administratively attached to the Department of Budget and Finance. The EUTF’s office is located at Suite 1520, City Financial Tower, Honolulu, Hawaii.

## **OVERVIEW**

Chapter 87A of the Hawaii Revised Statutes established a trust fund known as the Hawaii Employer-Union Health Benefits Trust Fund. The EUTF is the state agency that provides eligible state and county employees and retirees and their eligible dependents with health and life insurance benefits. The EUTF replaced the Hawaii Public Employees Health Fund (“PEHF”), effective July 1, 2003.

## **TRUST FUND ORGANIZATION**

### **Board of Trustees**

The EUTF is administered by a board of trustees (“Board”). The Board is responsible for determining the nature and scope of the benefit plans offered, negotiating and entering into contracts with insurance carriers and plan administrators, establishing eligibility criteria and management policies for the EUTF, and overseeing all EUTF activities.

There are ten trustees, five representing the public employers and five representing employee-beneficiaries, including a retiree representative. The current trustees are shown below:

#### **Employer Trustees**

- Barbara Annis
- Ron Boyer
- Darwin Ching
- Marie Laderta
- Stanley Shiraki

#### **Employee-Beneficiary Trustees**

- Carl Daeufer, Retirees
- Guy Fujio, HFFA
- Elizabeth Ho, AFSCME
- George Kahooohanohano, SHOPO
- John Radcliffe, UHPA

Board officers currently are George Kahooohanohano, Chairperson, Guy Fujio, Vice-Chairperson and Stanley Shiraki, Secretary-Treasurer. The officers serve a one-year term beginning July 1 of each year.

During the period covered by this report, the Board has used both standing and temporary committees to facilitate its administration of the EUTF. The two standing committees are the Administrative Committee and the Benefits Committee. The Administrative Committee considers matters pertaining to the administration and operation of the EUTF, e.g., development of budget, organization of staff, setting of personnel policies, evaluation of EUTF systems, and consideration of use of third party administration services. The Benefits Committee considers matters pertaining to the design and procurement of the EUTF’s health and life insurance benefit plans. The Board created an investment committee to develop and make recommendations regarding the Board’s investment long-term investment policies and guidelines.

### **Administrator and Staff**

The day-to-day administration of the EUTF is managed by an administrator who reports to and is responsible to the Board. The administrator is James Williams who was hired



in November 2004. The EUTF administrator and new staff positions are exempt from civil service.

The administrator is assisted in managing the EUTF by an assistant administrator, a financial management officer, an information systems analyst, and a health benefits program manager. EUTF staff has a total of 35 employees (including management staff and the Administrator).

The EUTF has three branches: the Financial Services Branch, Information Systems Branch, and Member Services Branch. A health benefits program manager oversees the Member Services Branch and is supported by employees assigned to customer service duties that include answering phones and e-mails from members and handling all processing for retirees and the other employees process all active employee enrollment submissions. The financial management officer is supported by two accountants and three account clerks, who reconcile employee accounts, collect employer/employee contributions for health benefits and process all payments. The EUTF information systems analyst provides internal IT support services, fulfills HIPAA security responsibilities, coordinates additional support services provided by DAGS/ICSD, is the project manager for the new benefits administration system implementation (BAS) project and is supported by one IS specialist.

#### Advisors and Consultants

The Board utilized the services of Aon Consulting as its benefits plan consultant since June 28, 2007. Aon Consulting is among the top global human capital and management consulting firms, providing a complete array of consulting, outsourcing and insurance brokerage services. The Honolulu office staffed by 11 consultants and support staff focuses on the delivery of employee benefit programs consistent with Hawaii statutes. Aon's initial contract was through June 30, 2009, and the Board exercised its option to extend the Contract for two years from July 1, 2009 through June 30, 2011.

The Board also has employed professional consultants and advisors on certain specific issues of importance to the EUTF. Business Solutions Technologies (BST) was retained to assist the EUTF with on-going support of the PeopleSoft health fund information management system (PeopleSoft/HFIMS) and assist as technical subject matter experts for implementing the new BAS. Vitech Systems Group, Inc. was selected to implement a new benefits administration system. This system will replace the PeopleSoft/HFIMS. Gartner, Inc. is providing project oversight and assessment over the implementation of the new benefits administration system. In addition, an advisor seat was renewed from Gartner, Inc., which offers a cost-effective way for EUTF to obtain valuable technical research, information and reports to support critical information technology needs. The Board contracted with Mercer Consulting to assist with development of the EUTF investment program, due to the need to invest OPEB contributions received by employers on a long-term basis.

#### **ADMINISTRATIVE RULES**

The EUTF operates according to administrative rules originally adopted in February 2003. The administrative rules were formulated to meet the requirements of Chapter 87A, Hawaii Revised Statutes, and the health and other benefit plans established by the EUTF. In addition, they were designed to increase administrative efficiencies and reduce the EUTF's administrative costs. For example, the rules set the

effective dates for initial enrollments, changes in enrollment, and cancellations of enrollment in the EUTF's health benefit plans so as to facilitate automated handling of such activities. After a general review by the staff and Board, the administrative rules were revised in July 2006.

## **HEALTH AND LIFE INSURANCE BENEFIT PLANS**

During fiscal year 2008-2009, the EUTF provided health and life insurance benefits through contracts with the following organizations:

- ◆ Hawaii Medical Service Association (HMSA)
- ◆ Health Management Associates (HMA)
- ◆ Kaiser Permanente (Kaiser)
- ◆ National Medical Health Card Systems, Inc (NMHC) (Now informedRx)
- ◆ Hawaii Dental Service (HDS)
- ◆ Vision Service Plan (VSP)
- ◆ Royal State National Insurance Company, Ltd./ChiroPlan Hawaii, Inc. (ChiroPlan)
- ◆ Royal State National Insurance Company, Ltd. (Royal State)
- ◆ Standard Insurance Company (Standard)

During fiscal year 2008-2009 the EUTF maintained a variety of plan offerings for both employees and retirees. HMSA and HMA provided the EUTF Preferred Provider Option (PPO) plan for both employees and retirees. HMO plans continued to include the Kaiser Comprehensive Option HMO plan, a Kaiser Basic Option HMO medical plan and an HMSA HMO medical plan. The HMSA High Deductible Health Plan was offered again for active employees. The supplemental plans offered by HMSA and Royal State National remained the same. HDS and VSP provided the regular dental and vision plans respectively for active employees and the regular dental and vision plans for retirees. Standard Life Insurance provided the life insurance plan for active employees and retirees. Contracts with these organizations expired on June 30, 2009, and were extended through June 30, 2011 (except Standard was extended to June 30, 2010).

For both active employees and retirees, the health benefit plans provided by the EUTF during the fiscal year were available to domestic partners and full-time students up to the age of 24. No additional premium was required for student coverage under the family option. Active employees also received chiropractic benefits through ChiroPlan Hawaii which was offered in combination with any of the medical plans offered.

All active employees who have medical coverage through private sector or federal government plans were eligible to enroll in either of two Supplemental Medical Plans. The Royal State National Insurance Company, Ltd. offered a dual coverage medical reimbursement plan, and HMSA offered a fee-for-service dual coverage plan.

The table below shows **active employees' enrollment** as of June 30, 2009.

<b>Type of Benefit Plans</b>	<b>Type of Coverage</b>			<b>Grand Total</b>
	<b>Self</b>	<b>Two-Party</b>	<b>Family</b>	
<b>MEDICAL - Self Funded</b>				
PPO				
Health Management Associates	428	163	191	782
Hawaii Medical Service Association	16799	5549	9729	32077
HDHP				
High Deductible Health Plan (HMSA)	167	26	43	236
Supplemental Plans				
Hawaii Medical Service Association	254	154	243	651
Royal State National	99	102	241	442
<b>Total PPO/Supplemental</b>				34188
<b>MEDICAL - Fully Insured</b>				
HMO				
Hawaii Medical Service Association	1069	333	467	1869
Kaiser Permanente Comprehensive	4483	1486	2311	8280
Kaiser Permanente Basic	319	85	103	507
<b>Total HMO</b>				10656
<b>WAIVED</b>				11301
<b>TOTAL MEDICAL</b>				56145
<b>PRESCRIPTION DRUGS - Self Insured</b>				
NMHC (Now informedRx)				
Prescription Drug Only	53	38	45	136
With PPO Plans	17227	5712	9920	32859
With Dual Plans	254	154	243	651
<b>TOTAL PRESCRIPTION DRUGS</b>				33646
<b>DENTAL</b>				
Hawaii Dental Service	22053	9520	15870	47674
<b>WAIVED</b>				8471
<b>TOTAL DENTAL</b>				56145
<b>VISION</b>				
Vision Services Plan	21876	8565	14412	45055
<b>WAIVED</b>				11090
<b>TOTAL VISION</b>				56145
<b>LIFE INSURANCE</b>				Total
Standard Life Insurance				55884
<b>WAIVED</b>				261
<b>TOTAL LIFE INSURANCE</b>				56145

The table below shows **retirees' enrollment** as of June 30, 2009

Type of Benefit Plans	Type of Coverage			Grand Total
	Self	Two-Party	Family	
<b>MEDICAL - Self Funded</b>				
HMA Non-Medicare	8	9	2	19
HMA With Medicare	16	11	0	27
HMSA Non-Medicare	2954	3169	987	7110
HMSA With Medicare	14019	8146	446	22611
Kaiser Non-Medicare	694	642	208	1544
Kaiser With Medicare	3258	1590	120	4968
Kaiser Out of State	87	52	2	141
WAIVED				850
<b>TOTAL MEDICAL</b>				37270
<b>PRESCRIPTION DRUGS - Self Insured</b>				
National Medical Health Card (Now informedRx)				
Non-Medicare	2982	3186	988	7156
Medicare Part D	13963	8071	444	22478
Waived Part D				807
<b>TOTAL PRESCRIPTION DRUGS</b>				30441
<b>DENTAL</b>				
Hawaii Dental Service	20957	13430	1643	36030
WAIVED				1240
<b>TOTAL DENTAL</b>				37270
<b>VISION</b>				
Vision Services Plan	20515	13556	1888	36391
WAIVED				879
<b>TOTAL VISION</b>				37270
<b>LIFE INSURANCE</b>				Total
Standard Life Insurance				32178
WAIVED				136
<b>TOTAL LIFE INSURANCE</b>				32314

## **OPERATIONS**

### Ongoing Programs and General Operations

The EUTF participates with the major State departments and counties which host pre-retirement, new hire orientation, RIF briefings, DPO informational, and Open Enrollment sessions during the year. The EUTF continued the program to provide on-site retirement counseling in conjunction with the Employees Retirement System's periodic group retirement counseling sessions. During these sessions, the employee receives counseling from the EUTF staff on their retirement health and life insurance benefits.

During FY2009, the EUTF Customer Service staff continued to be challenged with a high volume of phone calls. From July 1, 2008 – June 30, 2009, the EUTF Customer Service line received over 48,000 incoming telephone calls, answering 88% or 42,000 calls. In addition, the Customer Service staff made approximately 29,600 outgoing calls, totaling over 71,000 calls completed.

The Enrollment staff received and imaged 52,091 documents during FY2009. At the end of the period, only 344 remained in pending status. The majority of all enrollment related documents affected employee-beneficiary coverage. Other documents dealt with change of address, correction or clarification of data submitted, removal of dependents from plans and other miscellaneous categories. Staff processed over 17,225 retiree related forms and notices. In addition, over 15,300 COBRA related notices were processed, printed and mailed with 2,212 of the notices being returned for continuation coverage enrollment.

In order to better synchronize with the Medicare Part D open enrollment period held in November/December of each year, the open enrollment for EUTF retirees was held in the fall of 2008 to precede Medicare's open enrollment. The 2008 Retiree open enrollment concluded on November 14, 2008. During the open enrollment period 749 people attended the 32 sessions conducted on all major islands except Lanai. During the open enrollment period, retirees submitted 1,803 enrollment forms of which less than 500 were actual changes to plans or coverage. Most of the enrollment submissions related to adding or deleting a dependent.

The regular FY 2009 Open Enrollment for active employees was not held during the fiscal year. Rather, a special, limited Open Enrollment for hardship cases was conducted from May 15, 2009 to June 12, 2009. The EUTF staff conducted training sessions on the four major islands which were attended by over 300 personnel and financial officers. The EUTF received and processed 1,348 enrollment changes for the special open enrollment.

## **FISCAL YEAR 2009**

During FY 2009, the EUTF collected \$583,003,551 in employer and employee contributions for health benefit plans and paid carriers \$591,377,683 in premiums, benefit claims and administration expenses. Medicare Part B reimbursements paid to retirees amounted to \$42,945,825. The above amounts are presented on an accrual basis and do not include retrospective premium amounts of approximately \$2.9 million due to HDS and VSP and incurred but not reported expenses in the amount of approximately \$41.7 million for the self-funded plans.

An annual audit of the EUTF, as required by Chapter 87A-25(2), is being conducted for the plan year July 1, 2008 through June 30, 2009 by Grant Thornton LLP. This audit report includes Government Accounting Standards Board Statement No. 43 (GASB 43), Financial Reporting for Post-employment Benefit Plans Other Than Pension Plans. The EUTF audited financial reports will be presented to the Board of Trustees in January 2010 and the audit report will be forwarded under separate cover.

## APPENDIX D

### LETTER OF INTENT IN SUBMITTING A PROPOSAL

Hawaii Employer-Union Health Benefits Trust Fund  
City Financial Tower  
201 Merchant Street, Suite 1520  
Honolulu, Hawaii 96813

FAX Number – (808) 586-2320

E-mail – [eutf@hawaii.gov](mailto:eutf@hawaii.gov)

Re: Request for Proposals No. 10-001: Informational Document for Proposals to Furnish  
Benefit Plan Consulting Services

This is to acknowledge that we have examined the referenced Request for Proposals and are  
interested in submitting a proposal.

Submitted By:

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Fax Number: \_\_\_\_\_

## APPENDIX E

### PROPOSAL FORM PROFESSIONAL BENEFIT PLAN CONSULTING SERVICES

Organization Name: \_\_\_\_\_

Location of Home Office: \_\_\_\_\_

Location of Honolulu Office (if any): \_\_\_\_\_

Primary Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

1. Attach as Schedule 1, a description of your organization's operations, background, and experience in the field of professional employee benefit plan consulting service and other services. The description should include the history of your organization, its organizational structure, its size and resources, evidence of its financial stability, professional licenses, certifications and memberships held by your organization, types of work performed by your organization, and types of clientele served by your organization.
2. List the principal officers and principal employees of your organization, their job titles, their duties and responsibilities, their professional licenses and certifications, their memberships in professional societies, and the number or years of each person's full-time employee benefits plan consulting experience.
3. Attach as Schedule 2, resumes of the primary and all other employees that will be assigned to provide the consulting services as described in the Scope of Work of Request for Proposal ("RFP") 10-001. If not shown in the resumes, for each employee, state their: areas of expertise; current duties and responsibilities; professional licenses and certifications; memberships in professional societies; representative clients; and number of years of full-time employee-benefits plan consulting experience. Offerors should note that if awarded a contract, the key personnel identified in offeror's Proposal Form shall not be replaced without the prior approval of the Contract Administrator.
4. Attach as Schedule 3, a list of experts and other knowledgeable and qualified persons (in-house or outside) or service bureaus to whom your organization has ready access and can obtain information and professional services on employee benefit plan laws, contract administration, communicating plan benefits, operating procedures, etc.



5. Attach as Schedule 4, the methodology your organization will use to perform the work required in RFP 10-001. Include any creative ideas or suggestions that you have to improve the EUTF's benefit plans in terms of insurance coverages, computations or negotiations of monthly premium rates, contract provisions, preferred provider organizations, benefit plan administration, communication materials, enrollment forms and procedures, etc.
6. Attach as Schedule 5, three (3) samples of your employee benefit plan consulting work performed by your organization's primary employee(s) who will be assigned to this EUTF contract. One of the samples shall be an annual report. One of the samples shall demonstrate how your services improved the health benefit plans of your client.
7. Attach as Schedule 6, how you plan to meet accessibility requirements. You must be able to meet in person and participate in the meetings of the Board, Administrator, EUTF staff, Attorney General's Office, insurance carriers, etc.
8. Attach as Schedule 7, a list of four (4) major providers of employee benefits with whom your organization does business. Disclose providers' names, addresses, email addresses, and telephone numbers of the key contact persons with whom your firm negotiates rates and benefit plan coverages.
9. Attach as Schedule 8, a list of your clients in the State of Hawaii who are public employee organizations or who are insurance carriers performing benefit plan services for such employee organizations. (Note: clients may be duplicated in Schedule 4 above.)

Provide the following information: clients' name, address, the number of eligible subscribers covered, plan administrator's name and telephone number and the name of your firm's principal employees or secondary employee(s) assigned to each client contract.

10. Attach as Schedule 9, your organization's annual premium volume for health, long-term care, and group life insurance coverages written:
  - A. In the State of Hawaii, and
  - B. All jurisdictions including the State of Hawaii.
11. Attach as Schedule 10, a list of four (4) clients for whom your organization's principal employees have provided employee benefit plan consulting services. Include large public sector and private sector clients with 10,000 members or more.

Provide the following information: client's name, address, the number of eligible subscribers covered, plan administrator's name and telephone number and the names of your firm's principal employee(s) assigned to each client contract. Include a description of the scope of work performed for the client and a range of each client's annual premium volume.

12. Attach as Schedule 11, a copy of your Tax Clearance Certification (Form A-6), Revised 2006.
13. Attach as Schedule 12, a copy of the "Wage Certification" document.

14. Attach as Schedule 13, your organization's proposed fees for the following:

- A. Initial term of the contract;
- B. The optional extension period of the contract;
- C. The optional additional services; and
- D. Additional contract work.

The undersigned proposes to provide benefit plan consulting services to the Board of Trustees ("Board") of the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") as set forth in this proposal, all in strict compliance with the specifications, terms, and conditions set forth in RFP No. 10-001, and any modifications, amendments, and addenda issued to that RFP.

The undersigned states that he or she has carefully read and understands the terms and conditions of the proposed contract and agrees that the Board reserves the right to cancel the RFP, or reject any or all proposals, or waive any defects when, in their opinion, such is in the best interest of the EUTF and State of Hawaii.

The undersigned certifies that this proposal is not in violation of Section 84-15, Hawaii Revised Statutes, concerning prohibited State contracts, and is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned certifies that neither it nor any of its subsidiaries or principals presently has any interest and promises that neither it nor any of its subsidiaries or principals shall acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its professional benefit plan consulting services as required by the EUTF.

The undersigned represents: **(Check ☒ one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii;  
**OR**
- ☐ A **compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: \_\_\_\_\_

Offeror is:

- ☐ Sole Proprietor    ☐ Partnership    ☐ Corporation    ☐ Joint Venture
- ☐ Other \_\_\_\_\_

Federal I.D. No.: \_\_\_\_\_

Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address below): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Respectfully Submitted:

\*Authorized Original Signature: \_\_\_\_\_

Name and Title (Please Type or Print): \_\_\_\_\_

\*\*Exact Legal Name of Company (Offeror): \_\_\_\_\_

Date: \_\_\_\_\_

\*Please attach to this page notarized evidence of the authority of this officer to submit a proposal on behalf of your organization.

\*\*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed.

## SCHEDULES

### (Attachments to Proposal Form)

SCHEDULE 1 - Information about Organization

SCHEDULE 2 - Resumes of Principal Employees Assigned to Provide Services as Described in the Scope of Work for RFP No. 10-001

SCHEDULE 3 - List of experts and other knowledgeable and qualified persons whom you have ready access to and from whom you can obtain employee benefit plan information and services

<u>Name and Address</u>	<u>Profession or Specialty</u>	<u>Telephone Number</u>
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SCHEDULE 4 - Methodology to Perform Work Required under RFP No. 10-001 (including any creative ideas and suggested changes to improve the EUTF's benefit plan designs, contract terms and conditions, enrollment procedures and forms, and other items)

SCHEDULE 5 - Three (3) Samples of Company's Employee Benefit Plan Consulting Work

SCHEDULE 6 - Plan for Accessibility

SCHEDULE 7 - List Four Providers of Employee Benefits with Whom Your Organization does Business

<u>Providers' Name and Address</u>	<u>Key Contact Person</u>	<u>Telephone Number</u>
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SCHEDULE 8 - List of clients in the State of Hawaii who are (1) Public Employee Organizations or (2) Insurance Carriers who perform benefit plan administration services for public employee organizations

<u>Client's Name and Address and Number of Covered Persons</u>	<u>Type of Benefit Plan(s)</u>	<u>Administrator Name</u>	<u>Telephone Number</u>	<u>Firm's Principal Employees</u>
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SCHEDULE 9 - Annual Premium Volumes

SCHEDULE 10 - List of Four Clients – Employee Benefit Plan Consulting Services

Client's Name and Address and Number of <u>Covered Persons</u>	Type of Benefit Plan(s)	Administrator Name	Telephone Number	Firm's Principal <u>Employees</u>
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SCHEDULE 11 - A Copy of Tax Clearance Certification (Form A-6) Rev. 2006

SCHEDULE 12 - "Wage Certification" document

SCHEDULE 13 - Proposed Fees

## SCHEDULE 12

### WAGE CERTIFICATION

Subject: To furnish, supply, and deliver Benefit Plan Consulting Services for the Hawaii Employer-Union Health Benefits Trust Fund

Pursuant to Section 103-55, Hawaii Revised Statutes, I hereby certify that if awarded the contract in excess of \$25,000, the services to be performed will be performed under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to the public officers and employees for similar work, if similar positions are listed in the classification plan of the public sector.
2. All applicable laws of the Federal and State governments relating to worker's compensation, unemployment insurance, payment of wages, and safety will be fully complied with.

I understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55, Hawaii Revised Statutes.

Applicant: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE 13

### PROPOSED FEES

1.	Consultant Fees for Contract Period	<u>Annual Fees</u>
	A. Initial two-year period	
	July 1, 2011 – June 30, 2012	_____
	July 1, 2012 – June 30, 2013	_____
	Initial Contract Period Total Annual Fees	_____
	B. Optional contract extension period	
	July 1, 2013– June 30, 2014	_____
	July 1, 2014 – June 30, 2015	_____
	Contract Extension Period Total Annual Fees	_____
	TOTAL FOUR-YEAR FEE	_____

2.	Optional Additional Services	<u>Hourly Rate</u> <u>Primary</u> <u>Other</u>	<u>Fixed Cost</u>
	A. Open Enrollment Reference Guides & Open Enrollment Sessions		
	Initial two-year period		
	July 1, 2011 - June 30, 2012	_____	_____
	July 1, 2012 - June 30, 2013	_____	_____
	Optional contract extension period		
	July 1, 2013 - June 30, 2014	_____	_____
	July 1, 2014 - June 30, 2015	_____	_____

		<u>Hourly Rate</u>		<u>Fixed Cost</u>
		<u>Primary</u>	<u>Other</u>	
B.	Implementation of Recommendations			
	Initial two-year period			
	July 1, 2011 - June 30, 2012	_____	_____	_____
	July 1, 2012 - June 30, 2013	_____	_____	_____
	Optional contract extension period			
	July 1, 2013 - June 30, 2014	_____	_____	_____
	July 1, 2014 - June 30, 2015	_____	_____	_____
C.	On-Site Visits of Prospective Contractors			
	Initial two-year period			
	July 1, 2011 - June 30, 2012	_____	_____	_____
	July 1, 2012 - June 30, 2013	_____	_____	_____
	Optional contract extension period			
	July 1, 2013 - June 30, 2014	_____	_____	_____
	July 1, 2014 - June 30, 2015	_____	_____	_____
D.	Training of EUTF Staff and Other Parties			
	Initial two-year period			
	July 1, 2011 - June 30, 2012	_____	_____	_____
	July 1, 2012 - June 30, 2013	_____	_____	_____
	Optional contract extension period			
	July 1, 2013 - June 30, 2014	_____	_____	_____
	July 1, 2014 - June 30, 2015	_____	_____	_____
E.	Preparation and Management of RFP's			
	Initial two-year period			
	July 1, 2011 - June 30, 2012	_____	_____	_____
	July 1, 2012 - June 30, 2013	_____	_____	_____
	Optional contract extension period			
	July 1, 2013 - June 30, 2014	_____	_____	_____
	July 1, 2014 - June 30, 2015	_____	_____	_____



3. Additional Contract Work

	<u>Hourly Rate</u>	
	<u>Primary</u>	<u>Other</u>
Initial two-year period		
July 1, 2011 - June 30, 2012	_____	_____
July 1, 2012 - June 30, 2013	_____	_____
Optional contract extension period		
July 1, 2013 - June 30, 2014	_____	_____
July 1, 2014 - June 30, 2015	_____	_____

## **APPENDIX F**

### **HIPAA BUSINESS ASSOCIATE AGREEMENT**

## BUSINESS ASSOCIATE AGREEMENT

This Agreement, is effective as of \_\_\_\_\_, 20\_\_, between the Hawaii Employer-Union Health Benefits Trust Fund, State of Hawaii (hereinafter the "STATE"), by its Administrator, whose address is 201 Merchant Street, Suite 1520, Honolulu, Hawaii 96813, and \_\_\_\_\_ (hereinafter "BUSINESS ASSOCIATE"), a \_\_\_\_\_ under the laws of the State of \_\_\_\_\_, whose business address is as follows: \_\_\_\_\_.

### RECITALS

A. The STATE has entered into a contract with BUSINESS ASSOCIATE and/or procured the following goods and services from BUSINESS ASSOCIATE:

\_\_\_\_\_.

B. BUSINESS ASSOCIATE's contract and/or provision of goods and performance of services may require that: (1) Protected Health Information (defined below) or Electronic Protected Health Information (defined below) be disclosed to or used by BUSINESS ASSOCIATE; (2) BUSINESS ASSOCIATE create, receive, maintain or transmit Protected Health Information or Electronic Protected Health Information on behalf of the STATE; and/or (3) BUSINESS ASSOCIATE be provided or have access to Personal Information (defined below).

C. Both parties are committed to complying with the Privacy and Security Laws (defined below) with respect to Protected Health Information, Electronic Protected Health Information, and Personal Information.

D. This Agreement sets forth the terms and conditions pursuant to which the following will be handled: (1) Protected Health Information and Electronic Protected Health Information that is disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; (2) Protected Health Information and Electronic Protected Health Information that is created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of the STATE; and (3) Personal Information provided to BUSINESS ASSOCIATE or to which BUSINESS ASSOCIATE will have access by virtue of a contract with the STATE.

### TERMS AND CONDITIONS

1. Introduction: The STATE, as defined in this Agreement, has determined that it is a Covered Entity or a Health Care Component of a Covered Entity under HIPAA (defined below) and the Privacy and Security Rules (defined below). In addition, the STATE is subject to use and disclosure restrictions regarding Personal Information under Act 10 (defined below) and Chapters 487N and 487R, Hawaii Revised Statutes.

The parties acknowledge that entry into this Agreement is necessary and desirable in order to: (a) protect the privacy and security of Protected Health Information and Electronic Protected Health Information in accordance with the Privacy and Security Laws and because BUSINESS ASSOCIATE is a "business associate" of the STATE as that term is used in 45 Code of Federal Regulations ("C.F.R.") § 160.103; and (b) protect against the unauthorized use and disclosure of Personal Information that BUSINESS ASSOCIATE has been provided or to which BUSINESS ASSOCIATE has access by virtue of a contract with the STATE.

2. Definitions:

- a. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the Privacy and Security Laws.
- b. Act 10. "Act 10" shall mean Act 10, 2008 Session Laws of Hawaii, Special Session.
- c. Agreement. "Agreement" shall mean this agreement between STATE and BUSINESS ASSOCIATE and any and all attachments, exhibits and special conditions attached hereto.
- d. ARRA. "ARRA" shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and the rules and regulations promulgated under the ARRA.
- e. Breach. "Breach" shall have the meaning set forth in the ARRA.
- f. Electronic Protected Health Information. "Electronic Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, "Electronic Protected Health Information" is limited to Electronic Protected Health Information that is: (i) disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; and/or (ii) created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of the STATE.
- g. HIPAA. "HIPAA shall mean the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- h. Individual. "Individual" means the person who is the subject of Protected Health Information, and shall include a person who qualifies as a personal representative under 45 C.F.R. § 164.502(g).
- i. Individually Identifiable Health Information. "Individually Identifiable Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103.
- j. Personal Information. "Personal Information" shall have the meaning set forth in Section 487N-1, Hawaii Revised Statutes. For purposes of this Agreement, "Personal Information" is limited to Personal Information provided to BUSINESS ASSOCIATE or to which BUSINESS ASSOCIATE has access by virtue of a contract with the STATE.

- k. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as the same may be amended from time to time.
  - l. Privacy and Security Laws. "Privacy and Security Laws" shall include: (1) the provisions of HIPAA that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (2) the Privacy and Security Rules; (3) the provisions of ARRA, including the rules and regulations promulgated under the ARRA, that relate to the privacy and security of Protected Health Information and Electronic Protected Health Information; (4) Act 10 and, to the extent applicable, Chapters 487N and 487R, Hawaii Revised Statutes; and (5) other Federal and State privacy or security statutes and regulations that apply to Protected Health Information, Electronic Protected Health Information, or Personal Information.
  - m. Protected Health Information. "Protected Health Information" shall have the meaning set forth in 45 C.F.R. § 160.103. For purposes of this Agreement, "Protected Health Information" is limited to Protected Health Information that is: (i) disclosed to or used by BUSINESS ASSOCIATE by virtue of its contract with the STATE and/or its provision of goods and services to or for the STATE; and/or (ii) created, received, maintained, or transmitted by BUSINESS ASSOCIATE on behalf of the STATE .
  - n. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or designee.
  - o. Security Rule. "Security Rule" shall mean the Health Insurance Reform: Security Standards at 45 C.F.R. Part 160, Part 162, and Part 164, Subparts A and C, as the same may be amended from time to time.
  - p. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the meaning set forth in the ARRA.
3. Obligations and Activities of BUSINESS ASSOCIATE
- a. BUSINESS ASSOCIATE agrees to not use or disclose Protected Health Information, Electronic Protected Health Information, and Personal Information other than as permitted or required by this Agreement or as Required By Law.
  - b. BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information, Electronic Protected Health Information, and Personal Information other than as provided for by this Agreement.
  - c. BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards (as those terms are defined in the Security Rule) that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the STATE. Without limiting the foregoing, BUSINESS ASSOCIATE agrees to implement administrative, physical, and technical safeguards to comply with 45 C.F.R. §§ 164.308, 164.310, and 164.312, as and to

the extent that such is required of business associates under the Privacy and Security Laws (as amended by the ARRA).

- d. In accordance with Part V of Act 10, BUSINESS ASSOCIATE agrees to implement: (i) technological safeguards to reduce exposure to unauthorized access to Personal Information, (ii) mandatory training on security awareness topics relating to Personal Information protection for BUSINESS ASSOCIATE'S employees, and (iii) confidentiality agreements to be signed by BUSINESS ASSOCIATE'S employees. BUSINESS ASSOCIATE further agrees to safeguard Protected Health Information, Electronic Protected Health Information, and Personal Information in accordance with any rules, policies, procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE.
- e. BUSINESS ASSOCIATE agrees to ensure that any agent (including a contractor or subcontractor) to whom it provides Protected Health Information, Electronic Protected Health Information, or Personal Information agrees to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such information under this Agreement and the Privacy and Security Laws. BUSINESS ASSOCIATE further agrees to ensure that any such agent shall safeguard such Protected Health Information, Electronic Protected Health Information, and Personal Information in accordance with any rules, policies, procedures and directions adopted or implemented by STATE to the extent that such are communicated to BUSINESS ASSOCIATE.
- f. BUSINESS ASSOCIATE agrees to implement reasonable policies and procedures to comply with 45 C.F.R. § 164.316, as and to the extent that such is required of business associates under the Privacy and Security Laws (as amended by the ARRA).
- g. BUSINESS ASSOCIATE agrees to provide access to Protected Health Information in the Designated Record Set to STATE or, as directed by STATE, to an Individual to the extent and in the manner required by 45 C.F.R. § 164.524.
- h. BUSINESS ASSOCIATE agrees to make Protected Health Information available for amendment and to incorporate any amendments to Protected Health Information that the STATE directs or agrees to in accordance with the requirements of 45 C.F.R. § 164.526.
- i. BUSINESS ASSOCIATE agrees to document disclosures of Protected Health Information, disclosures of Electronic Protected Health Information and information related to such disclosures as would be required for STATE to respond to a request by an Individual for an accounting of disclosures of: (1) Protected Health Information in accordance with 45 C.F.R. § 164.528; and (2) Electronic Protected Health Information in accordance Section 13405(c) of the ARRA. BUSINESS ASSOCIATE further agrees to collect and provide to STATE, any and all information that is reasonably necessary for STATE to timely respond to such requests by an Individual for an accounting of disclosures.

- j. BUSINESS ASSOCIATE agrees to keep a log of Breaches of Unsecured Protected Health Information in such form and with such information as to enable the STATE to comply with Section 13402(e)(3) of the ARRA and the rules and regulations promulgated under ARRA.
- k. BUSINESS ASSOCIATE agrees to keep a complete log of disclosures made of Personal Information in accordance with Section 8(b)(6) of Act 10.
- l. BUSINESS ASSOCIATE agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information and Electronic Protected Health Information available to STATE and/or to the Secretary, at reasonable times and places or as designated by the STATE and/or the Secretary, for purposes of determining compliance with the Privacy and Security Laws. BUSINESS ASSOCIATE further agrees to make its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Personal Information available to STATE, at reasonable times and places or as designated by the STATE, for purposes of determining compliance with this Agreement, Act 10, and other Federal and State laws regarding the use and disclosure of Personal Information.
- m. BUSINESS ASSOCIATE agrees to report to STATE any disclosure or use of Protected Health Information not provided for by this Agreement of which it becomes aware. BUSINESS ASSOCIATE further agrees to report to STATE any security incidents that are required to be reported by or to the STATE under 45 C.F.R. Part 164, particularly 45 C.F.R. § 164.314.
- n. If there is a Breach of Unsecured Protected Health Information, BUSINESS ASSOCIATE shall: (i) notify the STATE in writing of the Breach no later than twenty (20) calendar days after BUSINESS ASSOCIATE's discovery of the Breach; (ii) investigate and report to STATE on the causes of the Breach, including without limitation, any steps that BUSINESS ASSOCIATE will take to mitigate the Breach and prevent the occurrence of future similar Breaches; (iii) in consultation with STATE, provide all notifications regarding the Breach that STATE and/or BUSINESS ASSOCIATE are required to make under ARRA, including without limitation, written notices to individuals, notices to the media, and notices to the Secretary or any other governmental entity, all such notices to be made in accordance with all ARRA requirements; (iv) unless the Breach is primarily caused by the negligence or other fault of the STATE, indemnify and hold STATE harmless from all claims, lawsuits, administrative proceedings, judgments, damages, liabilities, penalties, and costs arising from the Breach, including all costs of investigating the Breach, providing all required notices, and otherwise complying with all ARRA requirements; and (v) provide a log of all Breaches of Unsecured Protected Health Information to the STATE no later than twenty (20) calendar days after the end of each calendar year, which log shall include all information that STATE needs in order to comply with Section 13402(e)(3) of the ARRA..

- o. If there is a “security breach” regarding Personal Information as that term is defined in Section 487N-1, Hawaii Revised Statutes, BUSINESS ASSOCIATE shall: (i) notify the STATE in writing of the security breach no later than twenty (20) calendar days after BUSINESS ASSOCIATE’s discovery of the security breach; (ii) investigate and report to STATE on the causes of the security breach, including without limitation, any steps that BUSINESS ASSOCIATE will take to mitigate the Breach and prevent the occurrence of future similar Breaches; (iii) in consultation with STATE, provide all notifications regarding the security breach that STATE and/or BUSINESS ASSOCIATE are required to make under Chapter 487N and other applicable Hawaii Revised Statutes; (iv) unless the security breach is primarily caused by the negligence or other fault of the STATE, indemnify and hold STATE harmless from all claims, lawsuits, administrative proceedings, judgments, damages, liabilities, penalties, and costs arising from the security breach, including all costs of investigating the security breach, providing all required notices, and otherwise complying with Chapter 487N and other applicable Hawaii Revised Statutes; and (v) assist the State in providing any written report to the legislature or other government entities that is required by Chapter 478N and other applicable Hawaii Revised Statutes.
  - p. BUSINESS ASSOCIATE agrees to mitigate, to the extent practicable, any harmful effect that is known to BUSINESS ASSOCIATE of: (1) a security breach or disclosure or use of Protected Health Information, Electronic Protected Health Information, or Personal Information by BUSINESS ASSOCIATE in violation of the requirements of this Agreement; and/or (2) a Breach of Unsecured Protected Health Information by BUSINESS ASSOCIATE or any of its officers, employees, or agents (including contractors and subcontractors).
  - q. BUSINESS ASSOCIATE shall comply with any other requirements of the Privacy and Security Laws not expressly specified in this Agreement, as and to the extent that such requirements apply to business associates under the Privacy and Security Laws as the same may be amended from time to time.
4. Permitted Uses and Disclosures by BUSINESS ASSOCIATE
- a. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose or use Protected Health Information, Electronic Protected Health Information, and Personal Information to perform functions, activities, or services for, or on behalf of, STATE as specified in this Agreement, provided that such disclosure or use would not violate any Privacy and Security Laws if done by STATE.
  - b. Specific Use and Disclosure Provisions
    - (i) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information and Personal Information for the proper management and administration of the BUSINESS ASSOCIATE or to carry out the legal responsibilities of the BUSINESS ASSOCIATE.
    - (ii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Protected Health Information for the proper management and



administration of the BUSINESS ASSOCIATE, for disclosures that are Required By Law, or where BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person and the person agrees to notify BUSINESS ASSOCIATE of any instances where the confidentiality of the information has been breached. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may disclose Personal Information where such disclosure is permitted by applicable Federal or State laws.

- (iii) Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use Protected Health Information to provide Data Aggregation services to STATE as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (iv) BUSINESS ASSOCIATE may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

5. Indemnity by BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall defend, indemnify and hold harmless STATE and STATE'S officers, employees, and agents (including contractors and subcontractors) from and against any and all claims, demands, lawsuits, administrative or other proceedings, judgments, liabilities, damages, losses, fines, penalties, and costs, including reasonable attorneys' fees, that are caused by or arise out of a breach or failure to comply with any provision of this Agreement and/or by a violation of any provision of the Privacy and Security Laws, including the ARRA, by BUSINESS ASSOCIATE or any of BUSINESS ASSOCIATE'S officers, employees, or agents (including contractors and subcontractors).
6. Permissible Requests by STATE. STATE shall not request BUSINESS ASSOCIATE to disclose or use Protected Health Information, Electronic Protected Health Information, or Personal Information in any manner that would not be permissible under the Privacy and Security Laws if done by STATE.
7. Termination for Cause. In addition to any other remedies provided for by this Agreement, upon STATE'S knowledge of a material breach or violation by BUSINESS ASSOCIATE of the terms of this Agreement, STATE may either:
  - a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by the STATE; or
  - b. Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached or violated a material term of this Agreement and cure is not possible; and
  - c. If neither termination nor cure is feasible, STATE shall report any violation of the federal Privacy and Security Rules to the Secretary.

8. Effect of Termination.

- a. Upon any termination of this Agreement, until notified otherwise by STATE, BUSINESS ASSOCIATE shall extend all protections, limitations, requirements, and other provisions of this Agreement to: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE; and (iii) all Personal Information.
- b. Upon any termination of this Agreement, STATE shall determine whether it is feasible for BUSINESS ASSOCIATE to return or destroy all or any part of: (i) all Protected Health Information received from or on behalf of STATE or created or received by BUSINESS ASSOCIATE on behalf of STATE; (ii) all Electronic Protected Health Information created, received, maintained or transmitted by BUSINESS ASSOCIATE on behalf of STATE; and (iii) all Personal Information. In connection with the foregoing, upon any termination of the Agreement, BUSINESS ASSOCIATE shall notify the STATE in writing of any and all conditions that make return or destruction of such information not feasible and shall provide STATE with any requested information related to the STATE'S determination as to whether the return or destruction of such information is feasible.
- c. If STATE determines that return or destruction of all or any part of the Protected Health Information, Electronic Protected Health Information, and Personal Information is feasible, at STATE'S option, BUSINESS ASSOCIATE shall return or destroy such information. If STATE directs that BUSINESS ASSOCIATE return or destroy all or any part of the Protected Health Information, Electronic Protected Health Information, and Personal Information, it is understood and agreed that BUSINESS ASSOCIATE shall retain no copies of such information. Destruction of Personal Information shall be performed in accordance with Chapter 487R, Hawaii Revised Statutes.
- d. If STATE determines that return or destruction of all or any part of the Protected Health Information, Electronic Protected Health Information, and Personal Information is not feasible or opts not to require the return or destruction of such information, BUSINESS ASSOCIATE shall extend the protections, limitations, requirements, and other provisions of this Agreement to such information for so long as BUSINESS ASSOCIATE maintains such information. STATE understands that BUSINESS ASSOCIATE'S need to maintain portions of the Protected Health Information in records of actuarial determinations and for other archival purposes related to memorializing advice provided, can render return or destruction infeasible.
- e. The provisions of this Section 8 shall apply with respect to all terminations of this Agreement, for any reason whatsoever, and to any and all Protected Health Information, Electronic Protected Health Information, and Personal Information in the possession or control of any and all agents and subcontractors of BUSINESS ASSOCIATE.

9. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy and Security Laws means the section in effect or as amended.
- b. Amendment. BUSINESS ASSOCIATE and STATE agree to take all actions necessary to amend this Agreement in order for STATE to comply with the requirements of the Privacy Rule, Security Rule, HIPAA, ARRA, and/or any other Federal or State law that is determined to apply to the Protected Health Information, Electronic Protected Health Information, or Personal Information covered by this Agreement. All amendments shall be in writing and executed by both parties.
- c. Survival. The respective rights and obligations of STATE and BUSINESS ASSOCIATE under Sections 3, 5, and 8 above, shall survive the termination of this Agreement.
- d. Interpretation. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the Privacy and Security Laws, as amended, the Privacy and Security Laws shall control. Where provisions of this Agreement are different than those mandated in the Privacy or Security Laws, but are nonetheless permitted by the Privacy or Security Laws, the provisions of this Agreement shall control. Any ambiguity in this Agreement shall be resolved to permit STATE to comply with the Privacy and Security Laws.
- e. Third Parties. This Agreement is solely between BUSINESS ASSOCIATE and the STATE, and may be enforced only by BUSINESS ASSOCIATE or the STATE. This Agreement shall not be deemed to create any rights in any third parties or to create any obligations or liabilities of BUSINESS ASSOCIATE or the STATE to any third party.

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST  
FUND ("STATE")

By \_\_\_\_\_  
Administrator

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
("BUSINESS ASSOCIATE")

By \_\_\_\_\_

Its \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Deputy Attorney General